

No. 14893

United States
Court of Appeals
For the Ninth Circuit

GUENITH OPAL BEEDY and CYNTHIA GUEN
BEEDY, by His Next Friend, GUENITH
OPAL BEEDY,

Appellants,

VS.

THE WASHINGTON WATER POWER CO., a
Corporation,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Idaho
Northern Division.

FILED
FEB -8 1956

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Attorneys for Appellants.

McNAUGHTON & SANDERSON,
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PAINE, LOWE, COFFIN, ENNIS & HERMAN,
602 Spokane & Eastern Building,
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Attorneys for Appellee.

In the District Court of the United States, in and
for the District of Idaho, Northern Division

No. 1999

GUENITH OPAL BEEDY and CYNTHIA
GUEN BEEDY, by His Next Friend, GUEN-
ITH OPAL BEEDY,

Plaintiffs,

vs.

THE WASHINGTON WATER POWER CO., a
Corporation,

Defendant.

COMPLAINT

Plaintiffs complaint of the defendant and for
cause of action allege:

I.

Plaintiffs are residents of the State of Texas and
the defendant is a Corporation incorporated under
the laws of the State of Washington and is author-
ized and licensed and qualified to do business in the
State of Idaho. The matter in controversy herein
exceeds, exclusive of interest and costs, the sum of
\$3,000.00.

II.

That Guenith Opal Beedy is the surviving wife
and Cynthia Guen Beedy is the surviving child of
George D. Beedy.

III.

That the defendant, The Washington Water
Power Company, is a corporation engaged in the
transportation, delivery and sale of electricity for

the City of Wallace, Idaho, and vicinity as well as elsewhere in the United States.

IV.

That the deceased, George D. Beedy, was at all times herein mentioned an employee of the Lewis Construction Company of Great Falls, Montana, who had contracted to change the wires, insulators and crossarms on an electrical transmission line for the defendant.

V.

That on July 1, 1954, at a place approximately two miles northeast of Wallace, Idaho, the deceased, George D. Beedy, while in the course of his employment with the said Lewis Construction Company, was assisting in installing a transmission line across and above a 13,000-volt electrical power line which was then and there owned, operated and energized by the defendant; said transmission line was then and there attached to a winch on a truck and came into contact with the said defendant's 13,000-volt power line which energized the transmission line which in turn carried a deadly charge of electricity to the truck with which deceased was in contact, thereby electrocuting him.

VI.

That the defendant was negligent, careless and reckless, in that (a) prior to crossing the said 13,000-volt line above described, the deceased's employer requested the defendant to cut off the power on said electrical power line so that the crossing by the transmission line could be made in safety and

that the defendant neglected, failed to refused to comply with said request; (b) that the defendant, in violation of its duty at the time and place above mentioned, negligently failed to provide the deceased with a safe place to work; (c) that defendant, with knowledge of the dangerous condition existing in installation of transmission line in close proximity to its power line, failed and neglected to install proper safeguards and take proper precautions to prevent contact with its power line.

VII.

That the said negligence of defendant was the direct proximate cause of the deceased's death.

VIII.

That the plaintiffs were damaged by the loss of their father and husband in the sum of \$200,000.00.

Wherefore, the plaintiffs demand judgment against the defendant, The Washington Water Power Company, in the sum of \$200,000.00 and costs.

/s/ THOMAS PAYNE,

/s/ GLENN A. COUGHLAN,

Attorneys for Plaintiffs.

Plaintiffs herein demand that the above-entitled cause be tried before a jury.

/s/ THOMAS PAYNE,

/s/ GLENN A. COUGHLAN,

Attorneys for Plaintiff.

[Endorsed]: Filed November 26, 1954.

[Title of District Court and Cause.]

MOTION TO STRIKE

Defendant moves the court to strike from the complaint the last part of Paragraph VI, which reads as follows:

(b) "That the defendant, in violation of its duty at the time and the place above mentioned, negligently failed to provide the deceased with a safe place to work;"

(c) "That the defendant, with knowledge of the dangerous condition existing in installation of transmission in close proximity to its power line, failed and neglected to install proper safeguards and take proper precautions to prevent contact with its power line;"

for the reason that said allegations are immaterial.

Dated this 16th day of December, 1954.

McNAUGHTON & SANDERSON,

PAINE, LOWE, COFFIN,

ENNIS & HERMAN,

/s/ W. F. McNAUGHTON,

/s/ HORTON HERMAN,

Attorneys for Defendant.

[Endorsed]: Filed December 16, 1954.

[Title of District Court and Cause.]

MOTION FOR MORE
DEFINITE STATEMENT

Plaintiffs' complaint is so vague and ambiguous the defendant should not be reasonably required to prepare responsive pleading and the defendant, therefore moves the plaintiff be ordered to furnish more definite statement of the nature of their claim as set forth in the complaint in the following respects:

With respect to paragraph VI by stating whether after the deceased's employer requested the defendant to cut off the power on said electrical line:

(a) The defendant neglected after agreeing to cut off said power,

(b) the defendant merely failed to cut off said power after being requested, or

(c) the defendant specifically refused to cut it off.

Dated this 16th day of December, 1954.

McNAUGHTON & SANDERSON,
PAINE, LOWE, COFFIN,
ENNIS & HERMAN,

/s/ W. F. McNAUGHTON,

/s/ HORTON HERMAN,

Attorneys for Defendant.

[Endorsed]: Filed December 16, 1954.

[Title of District Court and Cause.]

MOTION TO DISMISS

And now comes the defendant, The Washington Water Power Co., and moves the court as follows:

I.

To dismiss the action because the complaint fails to state a claim against the defendant upon which relief can be granted.

Dated this 16th day of December, 1954.

McNAUGHTON & SANDERSON,
PAINE, LOWE, COFFIN,
ENNIS & HERMAN,

/s/ W. F. McNAUGHTON,

/s/ HORTON HERMAN,

Attorneys for Defendant.

[Endorsed]: Filed December 16, 1954.

[Title of District Court and Cause.]

INTERROGATORIES BY PLAINTIFFS

To Virgil Thompson, Local Manager, Washington Water Power Company, Wallace, Idaho:

You are hereby notified to answer under oath the interrogatories, numbered 1 to 15, as shown below, within 15 days of the time service is made upon

you, in accordance with Rule 33 of Federal Rules of Civil Procedure.

1. What is your occupation?
2. What is your residence?
3. How long have you resided there?
4. How long have you been so employed?
5. Were you on the premises of the work being done for your company by Lewis Construction Company of Great Falls, Montana, on the transmission line from Government Gulch Substation to Burke Substation in Idaho?
6. How often were you on the premises and on what dates?
7. Are you acquainted with Mr. Ed Raunig?
8. Were you contacted by him with respect to killing the hot lines over which crossings were being made by the Lewis Construction Company?
9. How many occasions?
10. What action did you take in respect to this request?
11. Did you ever make a request or order to anyone to kill the power lines owned by defendant over which, and during the time, Lewis Construction Company was installing transmission from Government Gulch Substation to Burke Substation?
12. Do you know who shut off the power on the Nine Mile Gulch line on July 11, 1954?
13. Who owns this line?
14. How long was the power off?
15. Was power subsequently cut off defendant's

lines over which Lewis Construction Company was making crossings subsequent to July 11, 1954?

Dated January 27, 1955.

/s/ THOMAS PAYNE,

/s/ GLENN A. COUGHLAN,
Attorneys for Plaintiffs.

[Endorsed]: Filed January 29, 1955.

[Title of District Court and Cause.]

ANSWER TO INTERROGATORIES
TO VIRGIL THOMPSON

Interrogatory No. 1.

District Manager, Coeur d'Alene Mining
District, Washington Water Power Company.

Interrogatory No. 2.

Silverton, Idaho.

Interrogatory No. 3.

Seventeen (17) months.

Interrogatory No. 4.

Twenty-two (22) months.

Interrogatory No. 5.

I was there from time to time because I was interested in the job, but I had no direct supervisory control over the operation. I was not on the premises or in the area at the time of the accident involved in this litigation.

Interrogatory No. 6.

I made no record of the exact times or dates that I was there. I would estimate that I saw the job or was in the neighborhood of the job on an average of two (2) times a week.

Interrogatory No. 7.

Yes.

Interrogatory No. 8.

I sat in on a conference in which it was determined which crossings could be killed and which had to be worked hot, early in the job. I don't recall ever being directly contacted by Mr. Raunig with respect to killing any specific lines.

Interrogatory No. 9.

I only remember the one conference referred to in the answer to the question above until the time approximately two (2) weeks after the accident, at which time Mr. Hammar, inspector for the company, contacted me with respect to a particular crossing. This was with reference to crossings on the Wallace to Burke section of the line.

Interrogatory No. 10.

I don't recall any specific request being made.

Interrogatory No. 11.

Yes; I issued orders to kill the crossings which it had been agreed would be de-energized.

lines over which Lewis Construction Company was making crossings subsequent to July 11, 1954?

Dated January 27, 1955.

/s/ THOMAS PAYNE,

/s/ GLENN A. COUGHLAN,
Attorneys for Plaintiffs.

[Endorsed]: Filed January 29, 1955.

[Title of District Court and Cause.]

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Interrogatory No. 10.

I don't recall any specific request being made.

Interrogatory No. 11.

Yes; I issued orders to kill the crossings which it had been agreed would be de-energized.

Interrogatory No. 12.

No one shut off the power on this date. When a short circuit occurred on the line, the automatic circuit-breaker opened automatically, and the line was off for a period of about one hour.

Interrogatory No. 13.

The Washington Water Power Company.

Interrogatory No. 14.

Approximately one (1) hour and five (5) minutes.

Interrogatory No. 15.

To the best of my recollection, we de-energized one feeder of our own subsequent to the accident, and lines owned by other utilities were de-energized subsequent to the accident.

/s/ VIRGIL THOMPSON.

Duly verified.

[Endorsed]: Filed February 14, 1955.

[Title of District Court and Cause.]

INTERROGATORIES BY PLAINTIFFS

To the Washington Water Company and J. E. Royer, Vice President:

You are hereby notified to answer under oath the interrogatories, numbered 1 to 30, as shown below, within 15 days of the time service is made upon you,

in accordance with Rule 33 of Federal Rules of Civil Procedure.

1. Did defendant, in April, 1954, have a contract with Lewis Construction Company of Great Falls, Montana, for work on your transmission line from the Washington Water Power Company Substation at Government Gulch to the Substation at Burke, Idaho?

2. Do you have a plan or plat showing the electrical transmission line of the defendant Company for the Wallace, Idaho, area, including the lines being worked on on July 11, 1954, and including the power line running up Nine Mile Gulch? If so, please attach a copy.

3. Who services, repairs and maintains the electrical power lines which you own in the Wallace, Idaho, area?

4. Are you cognizant of the provisions of the National Electric Safety Code?

5. Are you cognizant of the provisions of the Idaho Minimum General Safety Standards and Practices for Outdoor construction, operation and maintenance of electrical wires and equipment?

6. Does the defendant employ safety engineers?

7. If answer to the preceding question is in the affirmative, please state whether or not inspections by your safety engineers were made of the premises and work being done by Lewis Construction Com-

pany for defendant on the Government Gulch to Burke Substation Contract.

8. Please give names of safety engineers, dates and times of such inspections.

9. What safety precautions and procedures do you recommend when installing transmission lines across electrically energized power lines?

10. Did any of defendant's employees, agents, representatives or inspectors inspect the work on the line from Government Gulch Substation to Burke Substation as it was being performed?

11. Please state their position, names and addresses.

12. Were any of the agents, employees or officers of your company upon the premises where the accident occurred on July 11, 1954?

13. Is Sam Hammar in defendant's employ?

14. What is his position with defendant?

15. What connection, if any, did he have with the work being done by the Lewis Construction Company for defendant?

16. (a) Is Virgil Thompson employed by you?

(b) What is his position?

17. Do you own the electrical power line running up Nine Mile Gulch?

18. Do you energize this line?

19. What is the voltage of this line?

20. (a) Was the power cut off the Nine Mile Gulch line on July 11, 1954?

(b) If this power was cut off, at whose request?

(c) And who actually cut off the power?

(d) How long was the power off on this date?

21. Did defendant subsequently cut off the power at any other times on other of your lines when crossings were made by the Lewis Construction Company?

22. How many times?

23. When were you first notified that George Beedy was involved in the accident referred to in plaintiffs' complaint?

24. State the names and addresses of all persons having knowledge of the relevant facts of the injury to and the death of George Beedy whom you or your agents or representatives have interviewed.

25. Please furnish a copy of any and all written reports or documents you have made or received or have in your files concerning the accident of July 11, 1954, wherein George Beedy was killed.

26. Did your investigation reveal that the transmission line, being sagged by Lewis Construction Company on July 11, 1954, came into contact with a power line energized by the defendant?

27. What did your investigation reveal as to the proximate cause of George Beedy's death?

28. Was defendant or any of its agents or employees or representatives requested to cut off the electrical power on lines owned by it where crossings were made by the Lewis Construction Company?

29. If so, who made these requests?

30. What action was taken in respect to the request?

Dated January 27, 1955.

THOMAS PAYNE,

GLENN A. COUGHLAN,

/s/ THOMAS PAYNE,

/s/ GLENN A. COUGHLAN,

Attorneys for Plaintiffs.

[Endorsed]: Filed January 29, 1955.

[Title of District Court and Cause.]

ANSWER TO INTERROGATORIES TO THE
WASHINGTON WATER POWER COM-
PANY AND J. E. ROYER, VICE-PRESI-
DENT

Interrogatory No. 1.

Yes.

Interrogatory No. 2.

Yes. Copy is attached.

Interrogatory No. 3.

The Washington Water Power Company.

Interrogatory No. 4.

Yes.

Interrogatory No. 5.

Yes.

Interrogatory No. 6.

The Company employs a safety supervisor but no safety engineers as such.

Interrogatory No. 7.

The work was being done by an independent contractor who was completely responsible for methods of operation. The company made no safety inspections in connection with the work. Under our contract with the Lewis Construction Company, we had no control over their method of operation and no supervision over the contractor's personnel.

Interrogatory No. 8.

The question is inapplicable to the situation.

Interrogatory No. 9.

When work is being done under contracts such as this, the Company makes no recommendations as to safety precautions and procedures. When constructing lines on our own behalf, we employ adequate safeguards and structures to insure the safety of our personnel.

Interrogatory No. 10.

The Company had an inspector on the job whose duties were to inspect the work as it was

completed to insure that it met the specifications of the contract.

Interrogatory No. 11.

Sam J. Hammar, 1718 West Kiernan Avenue, Spokane, Wash. Position: Associate electrical engineer.

Glenn R. George, South 2822 Lincoln St., Spokane, Wash. Position: Construction engineer.

Interrogatory No. 12.

One of the Company's employees, Louis Clary, went to the neighborhood of the accident after the accident occurred and cleared the circuits and put them back in operation, but none was present at the time of the accident.

Interrogatory No. 13.

Yes.

Interrogatory No. 14.

Associate electrical engineer.

Interrogatory No. 15.

He was the inspector on the job who inspected the work as it was being completed to determine that it met the specifications called for in the contract.

Interrogatory No. 16.

(a) Yes.

(b) District Manager, Coeur d'Alene Mining District, at Wallace, Idaho.

Interrogatory No. 17.

Yes.

Interrogatory No. 18.

Yes.

Interrogatory No. 19.

Thirteen thousand (13,000) volts.

Interrogatory No. 20.

(a) It was automatically cut off when there was a short circuit on the line.

(b) It was automatically cut off. No one cut it off.

(c) Automatic switch.

(d) Approximately one (1) hour and five (5) minutes.

Interrogatory No. 21.

Yes.

Interrogatory No. 22.

At one crossing between Wallace and Gem on the Wallace-Burke section. The power was actually cut off twice on two different occasions at this particular crossing.

Interrogatory No. 23.

A representative of the Company was informed of this fact on July 12, 1954.

Interrogatory No. 24.

Ed F. Raunig, Great Falls, Montana; Dr. H. E. Bonebrake, Wallace, Idaho; Glenn R. George, S. 2822 Lincoln St., Spokane, Wash.; Virgil Thompson, Silverton, Idaho; Sam J. Hammar, West 1718 Kiernan Ave., Spokane, Wash., and Lewis Gardner, Sheriff, Wallace, Idaho.

Interrogatory No. 25.

Copy of report attached.

Interrogatory No. 26.

Yes.

Interrogatory No. 27.

It indicated that he was in contact with a truck which became energized when the transmission line that was being sagged by The Lewis Construction Company came in contact with a 13,000-volt feeder line owned by The Washington Water Power Company.

Interrogatory No. 28.

No; no specific requests were made. It was understood when the job began that all crossings were to be made hot. Later on, discussion was had of the possibility of de-energizing some lines. We are not certain whether The Washington Water Power Company or The Lewis Construction Company initiated the discussion. As a result of a conference, it was agreed that certain lines would be de-energized. We don't have any record of any specific bequest having been made.

Interrogatory No. 29.

No requests made.

Interrogatory No. 30.

No requests made.

/s/ J. E. ROYER.

Duly verified.

(Copy)

Report of Public Accident
Washington Water Power Company

Date of accident: July 11, 1954—1:15 p.m.

City or Town: Wallace, Idaho.

Name and address of person injured or owner of property damaged: George Beedy, Gem, Idaho; Jack Inman, Spokane, Washington; Don Carey, Great Falls, Montana.

Explain in detail nature of accident: The line crew of the Lewis Construction Company of Great Falls, Montana, was at work reconductoring Coeur d'Alene No. 3 High Line between Silverton, Idaho, and Nine Mile Canyon. One conductor slacked in to the 13 kv Nine Mile Feeder killing George Beedy, and burning Jack Inman on the hand and shoulder, who were leaning against the truck pulling the conductor. Don Carey was burned on the fingers while working on a pole structure.

Name and address of all witnesses: Employees of the Lewis Construction Company.

Extent of injury or damage to—Person: George Beedy, killed. Jack Inman, burned on the hand and shoulder. Don Carey, burned on the fingers.

Date Reported: July 14, 1954.

Reported by: /s/ Stanley Gibson, for District Manager.

[Endorsed]: Filed February 14, 1955.

[Title of District Court and Cause.]

MINUTES OF FEB. 15, 1955

This cause came on regularly in open court for hearing on defendant's Motion to Dismiss, Motion for More Definite Statement and Motion to Strike, Glenn Coughlan appearing for plaintiffs and Alan P. O'Kelly appearing for the defendant.

The motion for More Definite Statement was overruled and counsel ordered to get the information desired under the rules of discovery. The Motion to Strike was overruled without prejudice to renewal at the time of trial of the case on its merits. The Motion to Dismiss was taken under advisement. Plaintiff having filed brief, the defendant was given 7 days to file a reply brief and plaintiff 5 days to reply to reply brief.

[Title of District Court and Cause.]

ORDER

This matter is before the Court at this time on Defendant's Motion to Dismiss. Oral argument has been presented, counsel have submitted written briefs, and the Court has fully considered the same.

It is agreed in this case that it would be proper to grant this motion if the defendant, Washington Water Power, was an employer of the plaintiffs' decedent within the Workmen's Compensation Act. I.C. 72-1010, which would bar a suit against

the employer. *Moon vs. Erwin*, 64 Idaho, 464, states that: "The essential element of the relationship of 'employer and employee' is the right of control. Also,

"Under the provisions of the statute quoted, the true test is, Did the work being done pertain to the business, trade, or occupation of the defendant, carried on by it for pecuniary gain? If so, the fact that it was being done through the medium of an independent contractor would not relieve the defendant from liability." *Gifford vs. Nottingham*, 68 Idaho, 320, 193 Pac. 2d 831, citing *O'Boyle vs. Parker Young Co.*, 95 Vt., 58, 112 A. 385.

It appears to the Court at this time that there is no evidence in the record to determine these tests, and that these can only be determined on presentation of the case on its merits.

For these reasons, It Is Ordered that the Motion to Dismiss be, and the same is, hereby Denied without prejudice to raising these same objections and questions at the time of the trial of this case on the merits.

And it is so Ordered.

Dated this 6th day of April, 1955.

/s/ CHASE A. CLARK,
Chief Judge, United States District Court, District
of Idaho.

[Endorsed]: Filed April 6, 1955.

[Title of District Court and Cause.]

ANSWER

Defendant, in answer to plaintiff's Complaint, admits, denies and alleges as follows:

First Defense

I.

Admits that defendant is a corporation incorporated under the laws of the State of Washington and is authorized, licensed and qualified to do business in the State of Idaho, and that the matter in controversy herein exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000), and denies that it has any knowledge or information sufficient to form a belief as to the remaining allegations in Paragraphs I and II of plaintiffs' Complaint.

II.

Admits the allegations set forth in Paragraphs III, IV and V of plaintiffs' Complaint.

III.

Denies each and every allegation, matter and thing set forth in Paragraphs VI, VII and VIII of plaintiffs' Complaint, and specifically denies that plaintiffs are damaged in the sum of Two Hundred Thousand Dollars (\$200,000) or in any other amount.

Second Defense

For further, separate and affirmative defense to the Complaint herein, defendant alleges:

I.

That at the time the said deceased, George D. Beedy, was electrocuted as alleged in plaintiffs' Complaint, he was employed by the Lewis Construction Company, an independent contractor acting for and on behalf of defendant, which work being done by said independent contractor pertained to the business, trade or occupation of the defendant, carried on by it for pecuniary gain; and, under the terms of Idaho Code, § 72-1010, defendant was the employer of the said George D. Beedy for the purposes of the Idaho Workmen's Compensation Act; and, under § 72-203 of the Idaho Code, the rights and remedies of plaintiffs under the Idaho Workmen's Compensation Law are exclusive, and plaintiffs have claimed and received compensation under the Idaho Workmen's Compensation Law.

Third Defense

For further, separate and affirmative defense to the Complaint herein, defendant alleges:

I.

That any injuries sustained or suffered by the said George D. Beedy resulting in his death at the time and place and occasion mentioned in the Complaint were caused in whole or in part or were contributed to by the negligence or fault or want of care of the said George D. Beedy and not by any fault, negligence or want of care on the part of this defendant.

[Title of District Court and Cause.]

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II.

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III.

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For further, separate and affirmative defense to the Complaint herein, defendant alleges:

I.

That any injuries sustained or suffered by the said George D. Beedy resulting in his death at the time and place and occasion mentioned in the Complaint were caused in whole or in part or were contributed to by the negligence or fault or want of care of the said George D. Beedy and not by any fault, negligence or want of care on the part of this defendant.

Fourth Defense

For further, separate and affirmative defense to the Complaint herein, defendant alleges:

I.

That the employment of plaintiffs' decedent had certain risks incident thereto which were obvious and well known to plaintiffs' decedent at all the times of his employment, and also when he first entered thereon, and those risks were assumed by him and whatever injuries plaintiffs' decedent received, which resulted in his death, arose from and were caused by those risks thus assumed by him.

Wherefore, having fully answered, defendant prays that plaintiffs' Complaint be dismissed with prejudice, and that defendant may have and recover its costs and disbursements from plaintiffs.

McNAUGHTON & SANDERSON,
PAINE, LOWE, COFFIN,
ENNIS & HERMAN,

/s/ ALAN S. PAINE,

/s/ ALAN P. O'KELLY,

Attorneys for Defendant.

[Endorsed]: Filed April 15, 1955.

[Title of District Court and Cause.]

MINUTES OF MAY 16, 1955

The Court being fully advised in this matter, and good cause appearing, it was ordered that the setting of this matter be vacated to a later date.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

The defendant, The Washington Water Power Company, by McNaughton & Sanderson, and Paine, Lowe, Coffin, Ennis & Herman, its attorneys, hereby moves the Court to enter a summary judgment for the defendant in accordance with the provisions of Rule 56 (b) and (c) of the Rules of Civil Procedure on the ground that the pleadings, affidavits of B. J. Lindsay, Lester R. Gamble, J. Fletcher Emery, Thomas A. Purton, R. E. Forman and Virgil Thompson thereto attached, and the depositions of Ed F. Raunig, Ruben Liddell Brown and Jack P. Inman on file herein, show that defendant is entitled to judgment as a matter of law.

Dated this 1st day of July, 1955.

McNAUGHTON & SANDERSON,
PAINE, LOWE, COFFIN,
ENNIS & HERMAN,

/s/ ALAN P. O'KELLY,
Attorneys for the Defendant.

To: Thomas B. Payne and Glenn A. Coughlan, Attorneys for Plaintiff:

Please Take Notice that defendant will bring on for hearing the above Motion for Summary Judgment on the 15th day of July, 1955, or as soon thereafter as the above matter can be heard.

Dated this 1st day of July, 1955.

McNAUGHTON & SANDERSON,
PAINE, LOWE, COFFIN,
ENNIS & HERMAN,

/s/ ALAN P. O'KELLY,
Attorneys for the Defendant.

AFFIDAVIT OF B. J. LINDSAY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

State of Washington,
County of Spokane—ss.

B. J. Lindsay, being first duly sworn, deposes and says: That I am Secretary of The Washington Water Power Company and am the official custodian of the business records of The Washington Water Power Company.

This Affidavit is submitted in support of defendant's Motion for Summary Judgment herein for the purpose of showing that there is in this action no genuine issue as to any material fact and that

defendant is entitled to judgment as a matter of law.

That attached hereto, marked Exhibit "A" and made a part hereof, is a true and correct copy of a Contract entered into the 27th day of April, 1954, by and between Lewis Construction Company and The Washington Water Power Company as it appears in the original records of The Washington Water Power Company; that attached hereto, marked Exhibit "B" and made a part hereof, is a true and correct copy of Standard General Conditions for Engineering Construction, copyright 1925, by the Joint Conference on Standard Construction Contracts, which is referred to and made a part of said Agreement of April 27, 1954, by reference in Article VII of said Agreement.

That the records of the Company show that George Beedy and the crew with which he was working at the time of the injury resulting in his death, were performing their work on a private right-of-way easement owned by The Washington Water Power Company.

/s/ B. J. LINDSAY.

Subscribed and Sworn to before me this 30th day of June, 1955.

[Seal] /s/ ALAN P. O'KELLY,
Notary Public in and for the State of Washington,
Residing at Spokane.

EXHIBIT A

AGREEMENT

This Agreement, made the 27th day of April, in the year Nineteen Hundred and Fifty-four by and between Lewis Construction Company, hereinafter called the Contractor, and The Washington Water Power Company, hereinafter called the Owner,

Witnesseth, that the Contractor and the Owner for the considerations hereinafter named agree as follows:

Article I. Scope of Work

The Contractor shall furnish all of the equipment and perform all of the work shown on the drawings and described in the specifications, entitled:

Coeur d'Alene No. 3 Transmission Line—
Replace conductors from the Washington Water Power Company substation at Government Gulch to the substation at Burke, all in the state of Idaho, a distance of about 22.33 miles.

This work shall include:

1. Replace present arms that are in poor condition.
2. Remove overhead ground wires on those portions of the line where they now exist.
3. Replace all Hewlett type insulators with ball and socket type insulators.

4. Replace present 7 strand #8 and 7 strand #7 copper conductors with 397,500 c.m. A.C.S.R. conductors.

5. Replace guys or anchors or both where these have deteriorated to the extent that they can no longer withstand the loads imposed on them.

The Owner will supply the line materials and these will be stockpiled at Wallace, Idaho.

After the Contractor has taken the materials from the warehouse, he shall be responsible for their condition, loss and breakage. The Contractor shall do everything required by this Agreement, the General Conditions of the Contract, the Specifications and the Drawings.

Article II. Time of Completion

The work to be performed under this contract shall be commenced not later than May 3, 1954, and shall be completed, ready for service, not later than July 15, 1954. Cleanup work with the line energized may extend to August 13, 1954.

Article III. The Contract Sum

The Owner shall pay the Contractor for the performance of the contract subject to the additions and deductions therein, in current funds as follows:

Item	Approx. No.	Unit Price	Price
1. Install new poles	2	\$ 75.00	\$ 150.00
2. Install single 9 or 11 ft. arms	10	20.00	200.00
3. Install single 22 ft. arms	100	30.00	3,000.00
4. Install double 22 ft. arms	90	40.00	3,600.00
5. Install anchors	50	20.00	1,000.00
6. Install down guys	100	12.00	1,200.00
7. Install new string insulators	480	7.00	3,360.00
8. Install new clamp to present insulators and insulators to new arms	400	3.00	1,200.00
9. String new conductor with armor rods—miles	22.33	1,000.00	22,330.00
Total Installation Cost			\$36,040.00
10. Remove poles	2	25.00	50.00
11. Remove 9 or 11 ft. arms	10	5.00	50.00
12. Remove 22 ft. single arms	100	10.00	1,000.00
13. Remove 22 ft. double arms	90	15.00	1,350.00
14. Remove down guys	100	8.00	800.00
15. Remove string insulators	480	5.00	2,400.00
16. Remove present conductors— miles	22.33	500.00	11,165.00
17. Remove overhead grnd wire— miles	8.00	200.00	1,600.00
Total Removal Cost			\$18,415.00
Total Cost			\$54,455.00

In the event that the number of any item is increased or decreased, the unit prices shall apply and the total contract bid will be adjusted accordingly.

Any additional items of work not specified above but designated by the Company representative shall be paid on the basis of actual payroll labor for the work plus 38 per cent for overheads and equipment, plus 10 per cent of the total for profit.

On structures, such as the Type "O" where 22 foot arms must be cut to a shorter length, the unit price for 22 foot arms will be used.

Where the quantities originally contemplated are so changed that application of the agreed unit price to the quantity of work performed is shown to create a hardship to the Owner or the Contractor, there shall be an equitable adjustment of the contract to prevent such hardship.

Article IV. Progress Payments

The Owner shall make payments on account of the contract as provided therein, as follows:

On or about the seventh (7th) day of each month ninety (90) per cent of the value, based on the unit prices shown in the contract for labor and materials incorporated in the work and of materials suitably stored at the site thereof up to the first day of that month, as estimated by the Engineer, less the aggregate of previous payments.

Article V. Acceptance and Final Payment

Upon receipt of written notice that the work is ready for final inspection and acceptance, the Engineer shall promptly make such inspection and when he finds the work acceptable under the contract and the contract fully performed, he shall promptly issue a certificate, over his own signature, stating that the work provided for in this contract has been completed and is accepted by him

under the terms and conditions thereof, and the entire balance found to be due to the Contractor, including the retained percentage, shall be paid to the Contractor at the office of the Owner within seven (7) days after the date of said final certificate.

Before issuance of final certificate, the Contractor shall submit evidence satisfactory to the Engineer that all payrolls, material bills, and other indebtedness connected with the work have been paid.

The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, other than those arising from unsettled liens, from faulty work appearing after the final payment or from requirement of the Specifications and of all claims by the Contractor, except those previously made and still unsettled.

If after the work has been substantially completed, full completion thereof is materially delayed through no fault of the Contractor, and the Engineer so certifies, the Owner shall, upon certificate of the Engineer, and without terminating the contract, make payment of the balance due for the portion of the work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Article VI.

Insurance and Guaranty Bond Requirements

The Contractor shall provide insurance and guaranty bond as stated in Articles 27, 28, 29 and 30 of

the General Conditions for not less than the following amounts:

Public Liability	\$100,000-\$200,000
Property Damage	50,000- 100,000
Automobile Property Damage	5,000
Automobile Public Liability..	50,000- 100,000
Guaranty Bond—One Hundred Per Cent (100%) of Total Contract Bid.	

Article VII. The Contract Documents

Standard General Conditions for Engineering Construction, Copyright, 1925, by the Joint Conference on Standard Construction Contract, the Specifications and the Drawings, together with this Agreement, form the Contract, and they are as fully a part of the contract as if hereto attached or herein repeated.

Under Article 20 of the General Conditions, the time for giving notice of suspension shall be ten (10) days and the time within which notice of resumption must be given shall be thirty (30) days.

The following is an enumeration of the Specifications and Drawings:

Couer d'Alene No. 3 Transmission Line—Replace conductors—Specifications.

Plan and Profile Maps of the Line, Dwgs. E-1682, E-1683, E-1684 and E-2530 to E-2538.

Structure Drawings B-610, C-703, G-1665, G-1895, to G-1898, G-3650 and G-3656.

In Witness Whereof the parties hereto have executed this Agreement, the day and year first above written.

LEWIS CONSTRUCTION
COMPANY,
Contractor.

By /s/ ED. F. RAUNIG,
THE WASHINGTON WATER
POWER COMPANY,

By /s/ J. E. E. ROYER,
Vice President.

O.K.:

/s/ H. W. COFFIN,

/s/ LESTER R. GAMBLE.

Attest:

/s/ J. W. WILLIS,

Asst. Secretary.

(Seal).

EXHIBIT B

Standard General Conditions for
Engineering Construction
(Not designed for use in Building Construction)

Copyright 1925 by the Joint Conference on
Standard Construction Contracts

Insofar as matter contained herein is copyrighted by
The American Institute of Architects, the re-
print thereof is by permission of said Ameri-
can Institute of Architects.

Index to the Articles of the General Conditions

1. Definitions.
2. Execution, Correlation and Intent of Documents.
3. Detail Drawings and Instructions.
4. Copies of Drawings Furnished.
5. Order of Completion.
6. Drawings and Specifications on the Work.
7. Ownership of Drawings.
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9. Materials, Appliances, Employes.
10. Royalties and Patents.
11. Surveys, Permits and Regulations.
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40. Arbitration.
41. Lands for Work.
42. Cleaning Up.

Art. 1. Definitions

(a) The Contract Documents consist of the Agreement, the General Conditions of the Contract, the Drawings and Specifications, including all modifications thereof incorporated in the documents before their execution. These form the Contract.

(b) The Owner, the Contractor and the Engineer are those mentioned as such in the Agreement. They are treated throughout the Contract Documents as if each were of the singular number and masculine gender.

(c) Wherever in this Contract the word Engineer is used it shall be understood as referring to the Engineer of the Owner, acting personally or through an assistant duly authorized in writing for such act by the Engineer.

(d) Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.

(e) The term Subcontractor, as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.

(f) The term "work" of the Contractor or Subcontractor includes labor or materials or both, equipment, transportation, or other facilities necessary to complete the Contract.

(g) All time limits stated in the Contract Documents are of the essence of the Contract.

Art. 2. Execution, Correlation and Intent of Documents

The Contract Documents shall be signed in duplicate by the Owner and the Contractor. In case the Owner and the Contractor fail to sign the General Conditions, Drawings or Specifications, the Engineer shall identify them.

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the documents

is to include all labor and materials, equipment and transportation necessary for the proper execution of the work. It is not intended, however, that materials or work not covered by or properly inferable from any heading, branch, class or trade of the specifications shall be supplied unless distinctly so noted on the drawings. Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

Art. 3. Detail Drawings and Instructions

The Engineer shall furnish with reasonable promptness, additional instructions, by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom.

Art. 4. Copies of Drawings Furnished

Unless otherwise provided in the Contract Documents the Engineer will furnish to the Contractor, free of charge, all copies of drawings and specifications reasonably necessary for the execution of the work.

Art. 5. Order of Completion

The Contractor shall submit at such times as may be requested by the Engineer, schedules which shall show the order in which the Contractor proposes to carry on the work with dates at which the Contrac-

tor will start the several parts of the work and estimated dates of completion of the several parts.

Art. 6. Drawings and Specifications on the Work

The Contractor shall keep one copy of all drawings and specifications on the work, in good order, available to the Engineer and to his representatives.

Art. 7. Ownership of Drawings

All drawings, specifications and copies thereof furnished by the Engineer are his property. They are not to be used on other work and, with the exception of the signed Contract set, are to be returned to him on request, at the completion of the work. All models are the property of the Owner.

Art. 8. Contractor's Understanding

It is understood and agreed that the Contractor has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions and all other matters which can in any way affect the work under this Contract. No verbal agreement or conversation with any officer, agent or employe of the Owner, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.

Art. 9. Materials, Appliances, Employees

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment light, power, transportation and other facilities necessary for the execution and completion of the work.

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of a good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Contractor shall at all times enforce strict discipline and good order among his employees, and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

Art. 10. Royalties and Patents

The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has information that the process or article specified is an infringement of a patent he shall be responsible for such loss unless he promptly gives such information to the Engineer.

Art. 11. Surveys, Permits and Regulations

The Owner shall furnish all surveys unless otherwise specified. Permits and licenses of a temporary

nature necessary for the prosecution of the work shall be secured and paid for by the Contractor. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, he shall bear all costs arising therefrom.

Art. 12. Protection of Work and Property

The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. He shall adequately protect adjacent property as provided by law and the Contract Documents. He shall provide and maintain all passageways, guard fences, lights and other fa-

cilities for protection required by public authority or local conditions.

In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury, and he shall so act, without appeal, if so instructed or authorized. Any compensation, claimed by the Contractor on account of emergency work, shall be determined by agreement or arbitration.

Art. 13. Inspection of Work

The Engineer and his representatives shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection.

If the specifications, the Engineer's instructions, laws, ordinances or any public authority require any work to be specially tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection, and if the inspection is by another authority than the Engineer, of the date fixed for such inspection. Inspections by the Engineer shall be promptly made, and where practicable at the source of supply. If any work should be covered up without approval or consent of the Engineer, it must, if required by the Engineer, be uncovered for examination at the Contractor's expense.

Re-examination of questioned work may be ordered by the Engineer and if so ordered the work must be uncovered by the Contractor. If such work be found in accordance with the Contract Documents the Owner shall pay the cost of re-examination and replacement. If such work be found not in accordance with the Contract Documents the Contractor shall pay such cost, unless he shall show that the defect in the work was caused by another Contractor, and in that event the Owner shall pay such cost.

Art. 14. Superintendence: Supervision

The Contractor shall keep on his work during its progress a competent superintendent and any necessary assistants, all satisfactory to the Engineer. The superintendent shall not be changed except with the consent of the Engineer, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request in each case. The Contractor shall give efficient supervision to the work, using his best skill and attention.

If the Contractor, in the course of the work, finds any discrepancy between the drawings and the physical conditions of the locality, or any errors or omis-

sions in drawings or in the layout as given by points and instructions, it shall be his duty to immediately inform the Engineer, in writing, and the Engineer shall promptly verify the same. Any work done after such discovery, until authorized, will be done at the Contractor's risk.

Neither party shall employ or hire any employee of the other party without his consent.

Art. 15. Changes in the Work

The Owner, without invalidating the Contract, may order extra work or make changes by altering, adding to or deducting from the work, the Contract Sum being adjusted accordingly. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

In giving instructions, the Engineer shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of the work, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the Engineer, and no claim for an addition to the contract sum shall be valid unless so ordered.

The value of any such extra work or change shall be determined in one or more of the following ways:

- (a) By estimate and acceptance in a lump sum.
- (b) By unit prices named in the contract or subsequently agreed upon.
- (c) By cost and percentage or by cost and a fixed fee.

If none of the above methods is agreed upon, the Contractor, provided he receives an order as above, shall proceed with the work. In such case and also under case (c), he shall keep and present in such form as the Engineer may direct, a correct account of the net cost of labor and materials, together with vouchers. In any case, the Engineer shall certify to the amount, including reasonable allowance for overhead and profit, due to the Contractor. Pending final determination of value, payments on account of changes shall be made on the Engineer's estimate.

Art. 16. Claims for Extra Cost

If the Contractor claims that any instructions by drawings or otherwise involve extra cost under this contract, he shall give the Engineer written notice thereof within a reasonable time after the receipt of such instructions, and in any event before proceeding to execute the work, except in emergency endangering life or property, and the procedure shall then be as provided for changes in the work. No such claim shall be valid unless so made.

Art. 17. Deductions for Uncorrected Work

If the Engineer deems it inexpedient to correct

work injured or done not in accordance with the Contract, an equitable deduction from the contract price shall be made therefor.

Art. 18. Delays and Extension of Time

If the Contractor be delayed at any time in the progress of the work by any act or neglect of the Owner or of his employes, or by any other Contractor employed by the Owner, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Engineer pending arbitration, or by any cause which the Engineer shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Engineer may decide.

No such extension shall be made for delay occurring more than seven days before claim therefor is made in writing to the Engineer. In the case of a continuing cause of delay only one claim is necessary.

If no schedule or agreement stating the dates upon which drawings shall be furnished is made then no claim for delay shall be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such claim be reasonable.

This article does not exclude the recovery of

damages for delay by either party under other provisions in the contract documents.

Art. 19. Correction of Work Before Final Payment

The Contractor shall promptly remove from the premises all materials condemned by the Engineer as failing to conform to the Contract, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Contractor does not remove such condemned work and materials within a reasonable time, fixed by written notice, the Owner may remove them and may store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal within ten days' time thereafter, the Owner may, upon ten days' written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

Art. 20. Suspension of Work

The Owner may at any time suspend the work, or any part thereof by giving days' notice to the Contractor in writing. The work shall be resumed by the Contractor within ten (10) days after

the date fixed in the written notice from the Owner to the Contractor so to do. The Owner shall reimburse the Contractor for expense incurred by the Contractor in connection with the work under this Contract as a result of such suspension.

But if the work or any part thereof shall be stopped by the notice in writing aforesaid, and if the Owner does not give notice in writing to the Contractor to resume work at a date within (days) of the date affixed in the written notice to suspend, then the Contractor may abandon that portion of the work so suspended and he will be entitled to the estimates and payments for all work done on the portions so abandoned, if any.

Art. 21. The Owner's Right to Do Work

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this contract, the Owner, after three days' written notice to the Contractor may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

Art. 22. The Owner's Right to Terminate Contract

If the Contractor should be adjudged a bankrupt, or he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is

provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Engineer, or otherwise be guilty of a substantial violation of any provision of the contract, then the Owner, upon the certificate of the Engineer that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor seven days' written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Engineer.

Art. 23. Contractor's Right to Stop Work or Terminate Contract

If the work should be stopped under an order of any court, or other public authority, for a period

of three months, through no act or fault of the Contractor or of anyone employed by him, or if the Engineer should fail to issue any estimate for payment within seven days after it is due, or if the Owner should fail to pay the Contractor within seven days of its maturity and presentation, any sum certified by the Engineer or awarded by arbitrators, then the Contractor may, upon seven days' written notice to the Owner and the Engineer, stop work or terminate this contract and recover from the Owner payment for all work executed and any loss sustained upon any plant or materials and reasonable profit and damages.

Art. 24. Removal of Equipment

In the case of annulment of this contract before completion from any cause whatever, the Contractor, if notified to do so by the Owner, shall promptly remove any part or all of his equipment and supplies from the property of the Owner, failing which the Owner shall have the right to remove such equipment and supplies at the expense of the Contractor.

Art. 25. Use of Completed Portions

The Owner shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the time for completing the entire work or such portions may not have expired but such taking possession and use shall not be deemed an acceptance of any work not

completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the work, the Contractor shall be entitled to such extra compensation, or extension of time, or both, as the Engineer may determine.

Art. 26. Payments Withheld

The Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such extent as may be necessary to protect himself from loss on account of:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of the Contractor to make payments properly to subcontractors or for material or labor.
- (d) A reasonable doubt that the contract can be completed for the balance then unpaid.
- (e) Damage to another Contractor.

When the above grounds are removed payment shall be made for amounts withheld because of them.

Art. 27. Contractor's Liability Insurance

The Contractor shall maintain such insurance as will protect him from claims under workmen's compensation acts and from any other claims for damages for personal injury, including death, which

may arise from operations under this Contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. Certificates of such insurance shall be filed with the Engineer, if he so require, and shall be subject to his approval for adequacy of protection.

Art. 28. Indemnity

The Contractor shall indemnify and save harmless the Owner from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against him, by reason of any act or omission of the said Contractor, his agents or employes, in the execution of the work or in the guarding of it.

The Contractor shall, and is hereby authorized to, maintain and pay for such insurance, issued in the name of the Owner, as will protect the Owner from his contingent liability under this contract, and the Owner's right to enforce against the Contractor any provision of this article shall be contingent upon the full compliance by the Owner with the terms of such insurance policy or policies, a copy of which shall be deposited with the Owner.

Art. 29. Fire Insurance

The Contractor shall secure, in the name of the Owner, policies of fire insurance in amount, form and companies satisfactory to the Engineer, upon

such structures and material as shall be specified by the latter, payable to the Owner for the benefit of the Contractor or the Owner as the Engineer shall find their interests to appear.

Art. 30. Guaranty Bonds

The Owner shall have the right, prior to the signing of the Contract, to require the Contractor to furnish bond covering the faithful performance of the Contract and the payment of all obligations arising thereunder, in such form as the Owner may prescribe and with such sureties as he may approve. If such bond is required by instructions given previous to the receipt of bids, the premium shall be paid by the Contractor; if subsequent thereto, it shall be paid by the Owner.

Art. 31. Damages

Any claim for damage arising under this Contract shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the time of final payment, except as expressly stipulated otherwise in the case of faulty work or materials, and shall be adjusted by agreement or arbitration.

Art. 32. Liens

Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Owner a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he

has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Engineer, to indemnify the Owner against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

Art. 33. Assignment

Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Engineer.

Art. 34. Rights of Various Interests

Wherever work being done by the Owner's forces or by other contractors is contiguous to work covered by this Contract the respective rights of the various interests involved shall be established by the Engineer, to secure the completion of the various portions of the work in general harmony.

Art. 35. Separate Contracts

The Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for

the introduction and storage of their materials and the execution of their work, and shall properly connect and co-ordinate his work with theirs.

If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results. His failure so to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work after the execution of his work.

To insure the proper execution of his subsequent work the Contractor shall measure work already in place and shall at once report to the Engineer any discrepancy between the executed work and the drawings.

Art. 36. Subcontracts

The Contractor shall, as soon as practicable after the signing of the Contract, notify the Engineer in writing of the names of subcontractors proposed for the work and shall not employ any that the Engineer may within a reasonable time object to as incompetent or unfit.

The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or in-

directly employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the Owner.

Art. 37. Points and Instructions

The Contractor shall provide reasonable and necessary opportunities and facilities for setting points and making measurements. He shall not proceed until he has made timely demand upon the Engineer for, and has received from him, such points and instructions as may be necessary as the work progresses. The work shall be done in strict conformity with such points and instructions.

The Contractor shall carefully preserve bench marks, reference points and stakes, and in case of wilful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

Art. 38. Engineer's Status

The Engineer shall have general supervision and direction of the work. He has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract. He shall also have authority to reject all work and materials which do not conform to the contract, to direct the application of forces to any portion of the work, as in his judgment is required, and to order

the force increased or diminished, and to decide questions which arise in the execution of the work.

Art. 39. Engineer's Decisions

The Engineer shall, within a reasonable time after their presentation to him, make decisions in writing on all claims of the Owner or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

All such decisions of the Engineer shall be final except in cases where time and/or financial considerations are involved, which, if no agreement in regard thereto is reached, shall be subject to arbitration.

Art. 40. Arbitration

(a) Demand for Arbitration.—Any decision of the Engineer which is subject to arbitration shall be submitted to arbitration upon the demand of either party to the dispute.

The Contractor shall not cause a delay of the work because of the pendency of arbitration proceedings, except with the written permission of the Engineer, and then only until the arbitrators shall have an opportunity to determine whether or not the work shall continue until they decide the matters in dispute.

The demand for arbitration shall be delivered in writing to the Engineer and the adverse party, either personally or by registered mail to the last

known address of each, within ten days of the receipt of the Engineer's decision, and in no case after final payment has been accepted except as otherwise expressly stipulated in the Contract Documents. If the Engineer fails to make a decision within a reasonable time, a demand for arbitration may be made as if his decision had been rendered against the demanding party.

(b)—Arbitrators.—No one shall be nominated or act as an arbitrator who is in any way financially interested in this Contract or in the business affairs of the owner, or the Contractor or the Engineer, or otherwise connected with any of them. Each arbitrator shall be a person in general familiar with the work or the problem involved in the dispute submitted to arbitration.

Unless otherwise provided by controlling statutes, the parties may agree upon one arbitrator; otherwise there shall be three, one named in writing, by each party to this Contract, to the other party, and the third chosen by those two arbitrators, or if they should fail to select a third within fifteen days, then he shall be appointed by the presiding officer, if a disinterested party, of the Bar Association nearest to the location of the work.* Should the party demanding arbitration fail to name an arbitrator within ten days of his demand, his right to arbitration shall lapse. Should the other party fail to name an arbitrator within said ten days, then said* pre-

*To provide some other agency for appointing arbitrators strike out reference to presiding officer

siding officer shall appoint such arbitrator within ten days, and upon his failure so to do then such arbitrator shall be appointed on the petition of the party demanding arbitration by a judge of the Federal Court in the district where such arbitration is to be held.

The said* presiding officer shall have the power to declare the position of any arbitrator vacant by reason of refusal or inability to act, sickness, death, resignation, absence or neglect. Any vacancy shall be filled by the party making the original appointment, and unless so filled within five days after the same has been declared, it shall be filled by the said* presiding officer. If testimony has been taken before a vacancy has been filled, the matter must be reheard unless a rehearing is waived in the submission or by the written consent of the parties.

If there be one arbitrator his decision shall be binding; if three, the decision of any two shall be binding in respect to both the matters submitted to

of the Bar Association and insert desired designation. In the vicinity of New York, the Arbitration Society of America, Inc., and the Chamber of Commerce of the State of New York have Arbitration Committees which often act in this capacity.

*To provide some other agency for appointing arbitrators strike out reference to presiding officer of the Bar Association and insert desired designation. In the vicinity of New York, the Arbitration Society of America, Inc., and the Chamber of Commerce of the State of New York have Arbitration Committees which often act in this capacity.

and the procedure followed during the arbitration. Such decision shall be a condition precedent to any right of legal action.

(c) Arbitration Procedure. — The arbitrators shall deliver a written notice to each of the parties and to the Engineer, either personally or by registered mail to the last known address of each, of the time and place for the beginning of the hearing of the matters submitted to them. Each party may submit to the arbitrators such evidence and argument as he may desire and the arbitrators may consider pertinent. The arbitrators shall, however, be the judges of all matters of law and fact relating to both the subject matters of and the procedure during arbitration and shall not be bound by technical rules of law or procedure. They may hear evidence in whatever form they desire. The parties may be represented before them by such person as each may select, subject to the disciplinary power of the arbitrators if such representative shall interfere with the orderly or speedy conduct of the proceedings.

Each party and the Engineer shall supply the arbitrators with such papers and information as they may demand, or with any witness whose movements are subject to their respective control, and upon refusal or neglect to comply with such demands the arbitrators may render their decision without the evidence which might have been elicited therefrom and the absence of such evidence shall afford no ground for challenge of the award by the party refusing or neglecting to comply with such demand.

The submission to arbitration (the statement of the matters in dispute between the parties to be passed upon by the arbitrators) shall be in writing duly acknowledged before a notary. Unless waived in writing by both parties to the arbitration, the arbitrators, before hearing testimony, shall be sworn by an officer authorized by law to administer an oath, faithfully and fairly to hear and examine the matters in controversy and to make a just award according to the best of their understanding.

The arbitrators, if they deem the case demands it, are authorized to award to the party whose contention is sustained such sums as they shall consider proper for the time, expense and trouble incident to the arbitration, and if the arbitration was demanded without reasonable cause, damages for delay and other losses. The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the costs and charges of the arbitration upon either or both parties.

The award of the arbitrators shall be in writing and acknowledged like a deed to be recorded, and a duplicate shall be delivered personally or by registered mail, forthwith upon its rendition, to each of the parties to the controversy and to the Engineer. Judgment may be rendered upon the award by the Federal Court or the highest State Court having jurisdiction to render same.

The award of the arbitrators shall not be open to objection on account of the form of the proceedings

or the award, unless otherwise provided by the controlling statutes. In the event of such statutes providing on any matter covered by this Article otherwise than as hereinbefore specified, the method of procedure throughout and the legal effect of the award shall be wholly in accord with said statutes, it being the intention hereby to lay down a principle of action to be followed, leaving its local application to be adapted to the legal requirements of the jurisdiction having authority over the arbitration.

The Engineer shall not be deemed a party to the dispute. He is given the right to appear before the arbitrators to explain the basis of his decision and give such evidence as they may require.

Art. 41. Lands for Work

The Owner shall provide the lands upon which the work under this Contract is to be done, except that the Contractor shall provide land required for the erection of temporary construction facilities and storage of his material, together with right of access to same.

Art. 42. Cleaning Up

The Contractor shall, as directed by the Engineer, remove from the Owner's property and from all public and private property, at his own expense, all temporary structures, rubbish and waste materials resulting from his operations.

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AFFIDAVIT OF LESTER R. GAMBLE IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

State of Washington,
County of Spokane—ss.

Lester R. Gamble, being first duly sworn, deposes and says: I am Chief Engineer of The Washington Water Power Company, and have personal knowledge of the facts herein set forth, or have taken all data submitted herewith from the records of The Washington Water Power Company, which have been kept in the regular course of business and which are under my direct control and supervision.

This Affidavit is submitted in support of the defendant's Motion for Summary Judgment herein for the purpose of showing that there is in this action no genuine issue as to any material fact and that the defendant is entitled to judgment as a matter of law.

The Washington Water Power Company is a public utility company owning and operating an electric utility system, including power generating plants and associated works and facilities, transmission and distribution facilities serving residential, rural, commercial, and industrial customers in the eastern part of the State of Washington and in the northwestern and west central parts of the State of Idaho.

Since shortly after the incorporation of The Washington Water Power Company in 1889, The Washington Water Power Company has engaged in the business of constructing and maintaining electric transmission lines, including the changing of wires, insulators and cross-arms. The changing of wires is hereinafter referred to as "reconductor-ing." During the period between the incorporation of The Washington Water Power Company and the present time, the Company has done most of the construction and reconductoring of transmission lines through the medium of its own employees directly employed by the company. On occasions, when all the regular employees of the company are occupied and it is necessary to build additional transmission lines, which the company cannot take care of with its own crews, the company has contracted out the building of transmission lines to contractors. Prior to 1942 such occasions were comparatively rare. During the 1940's this practice increased considerably due to the shortage of manpower brought about by World War II, and to the tremendously accelerated construction program during and immediately following World War II. At the present time the amount of contract work on lines energized at 13,000 volts and over is shown by the chart attached hereto and labeled as Exhibit "A," which chart shows the amount of construction done by company employees versus that done by contractors and the amount of reconductoring done by the company versus the amount done by contractors over the last five-year period. This chart was pre-

pared by me or under my direct supervision from the original records of the Company which are kept in the normal course of business.

During the past five-year period, the company has constructed approximately half of its own major lines and has had the other half constructed by contract. The reconductoring of lines that are already established is generally a fairly small item in the construction budget. During the past five years, the company has employed contractors to reconductor lines only during one year, the year 1954, when the company found it necessary to do an unusual amount of reconductoring. The company generally maintains construction crews sufficient to take care of ordinary construction programs, which crews can be kept occupied on a year around basis. To the extent that the company cannot construct its own lines with its own crews, it contracts out the construction on a bid basis.

In the public utility industry generally, the construction and reconductoring of transmission lines is considered part of the business of the utility.

In the electric utility industry it is not considered particularly dangerous to construct or reconductor transmission lines over transmission or other lines carrying electric current. Experienced workmen can make such crossings in relative safety if they follow recognized procedures. The Lewis Construction Company was experienced in working with electric transmission lines and represented itself to

be competent to make crossings over lines carrying electric currents.

/s/ LESTER R. GAMBLE.

Subscribed and Sworn to before me this 30th day of June, 1955.

[Seal] /s/ ALAN P. O'KELLY,
Notary Public in and for the State of Washington,
Residing at Spokane Therein.

EXHIBIT 1

The Washington Water Power Company

Major Line Construction, 13,000 volts and over—
1950 to 1954 Inclusive

Constructed by WWPCo. Crews and by Contractor

		<u>Total Construction Cost</u>			
Year	Type of Construction	WWP Crew		Contractor	
		Miles	Cost	Miles	Cost
1950	New line	23.5	\$ 183,225	39	\$298,518
1950	Reconductor	5.85	12,000		
1951	New line	52.25	177,956	20.2	88,114
1951	Reconductor				
1952	New line	50.7	154,615	14.7	154,788
1952	Reconductor	2.0	8,000		
1953	New line	51.2	289,640	39.5	256,783
1953	Reconductor	1.5	6,000		
1954	New line	48.3	314,668	52.5	343,793
1954	Reconductor	5.6	13,500	21.33	127,953

AFFIDAVIT OF J. FLETCHER EMERY

State of Idaho,
County of Ada—ss.

J. Fletcher Emery, being first duly sworn, deposes and says: I am Superintendent of Electrical Operations and Construction of the Idaho Power Company and have personal knowledge of the facts herein set forth, or have taken all data submitted herewith from the records of Idaho Power Company, which records have been kept in the regular course of business and are maintained under my direct control and supervision.

The Idaho Power Company is a public utility company owning and operating an electrical utility system, including power generating plants and associated works and facilities, transmission and distribution facilities, serving residential, rural, commercial and industrial customers in the southern part of the State of Idaho and in eastern Oregon and northern Nevada.

The Idaho Power Company in the course of its business as a public utility engages in the construction and maintenance of electric transmission and distribution lines, including the changing of wires, insulators and crossarms. The changing of wires is hereinafter referred to as "reconductoring."

The construction and reconductoring of lines has generally been performed by employes of the Company with the company training and maintaining a group of employes to perform these tasks. In some

instances, because of traveling problems or conflicting duties, the Company engages independent contractors to perform the necessary construction and reconductoring. However, in recent years the amount of contract work has been materially reduced and, in fact, for the years 1952, 1953 and 1954, all construction and reconductoring was performed by the Company employees.

For the purpose of illustrating the amount of line construction and reconductoring by the Idaho Power Company over the past five years, and the proportion of said work performed by contractors, there is attached hereto a chart denominated as Exhibit "A." This chart was prepared under my direct supervision from the original records of the Company which are kept in the normal business of the Company and is a true representation of the facts stated therein.

Dated at Boise, Idaho, this 13th day of June, 1955.

/s/ T. FLETCHER EMERY.

Subscribed and sworn to before me this 13th day of June, 1955.

[Seal] /s/ MARGARET A. WILLIAMS,
Notary Public Residing at
Boise, Idaho.

My Commission expires April 21, 1959.

EXHIBIT "A"

Idaho Power Company

Major Line Construction, 13,000 volts and over—
1950 to 1954 Inclusive

Constructed by IPCo Crews and Various Contractors

Year	Type of Construction	<u>Total Construction Cost</u>			
		IPCo Crew		Contractor	
		Miles	Cost	Miles	Cost
1950	New line	216.53	\$3,748,845	44.11	\$293,724
1950	Reconductor				
1951	New line	181.63	1,307,374	5.91	23,327
1951	Reconductor				
1952	New line	117.12	1,149,259		
1952	Reconductor				
1953	New line	174.39	2,108,799		
1953	Reconductor	16.60	24,757		
1954	New line	124.68	1,347,586		
1954	Reconductor	3.2	30,000		

DEH:im

6-9-55

AFFIDAVIT OF THOMAS A. PURTON

State of Utah,

County of Salt Lake—ss.

Thomas A. Purton, being first duly sworn, deposes and says:

That I am Chief Engineer of the Utah Power & Light Company, an electric public utility duly authorized and doing business in the States of Utah, Idaho and Wyoming, with extensive generation, transmission and distribution systems located principally in the States of Utah and Idaho; that I am also Chief Engineer of The Western Colorado

Power Company, an electric utility generating, transmitting and distributing electric energy on the western slope in the vicinity of Montrose, Durango, and surrounding areas, Colorado.

That I have been continuously engaged in electric public utility work in excess of thirty-five years and hold degrees from the University of Kansas as a Bachelor of Science, Mechanical Engineer and Electrical Engineer; that I am duly licensed as a Professional Engineer in the State of Idaho, my Certificate Number in said State being 255; duly licensed as a Professional Engineer in the State of Utah, my Number in said State being 1008; and duly licensed as a professional Engineer in the State of Colorado, my license Number in said State being 852.

That as Chief Engineer of said Companies, I have access to the records having to do with the construction, reconstruction, replacement, relocation, maintenance, repair, reconductoring, and other matters relating to transmission and distribution lines and pertinent facilities.

That I know of my own knowledge that the Utah Power & Light Company and its subsidiary The Western Colorado Power Company have maintained and do maintain as a part of their general business activity as electrical corporations, a substantial number of crews whose primary duty is the construction, reconstruction, replacement, relocation, maintenance, repair, reconductoring, etc., of transmission and distribution lines and equipment.

That in the past, during slack periods, all of the construction, reconstruction, replacement, relocation, maintenance, repair, and reconductoring at times has been done solely by employes of the respective Companies. In recent years and during certain times in the past, due to accelerated expansion programs, it has been impractical for these Companies to maintain sufficient forces on their own payrolls and equipment to handle all of the construction, reconstruction, replacement, relocation, maintenance, repair, reconductoring and pertinent activities in connection with its transmission and distribution systems and, under these circumstances and as a part of the general business activity of these Companies, it has been necessary to enter into contracts with independent contractors for the construction, reconstruction, replacement, relocation, maintenance, repair, reconductoring, etc., of a part of the transmission and distribution facilities of said Companies.

The attached Exhibit "A," which by this reference is incorporated as a part of this Affidavit, indicates in dollars the amount of work on transmission and distribution facilities which Utah Power & Light Company has performed by its own line crews and similar work which has been done by Contractors for the years 1953 and 1954.

I further state of my own knowledge that it is a general practice among electric utilities to follow the procedures above outlined with reference to performing a part of the construction, reconstruction, replacement, relocation, maintenance, repair, recon-

ductoring, etc., of the facilities mentioned with their own forces and under certain circumstances to contract with independent contractors for construction, reconstruction, replacement, relocation, maintenance, repair, reductoring, etc., of some transmission and distribution facilities.

I also state of my own knowledge that the construction, reconstruction, replacement, relocation, maintenance, repair, reductoring and other matters pertaining to transmission and distribution lines of electric utilities are definitely considered a part of the electric utility business.

/s/ THOMAS A. PURTON.

Subscribed and sworn to before me this 6th day of June, 1955.

[Seal] /s/ CHAS. L. OVARD,
Notary Public.

My Commission expires: Aug. 26, 1956.

EXHIBIT "A"

Utah Power & Light Company

Transmission and Distribution Lines constructed or rebuilt by Utah Power & Light Company and contractors for Utah Power & Light Company system during 1953 and 1954.

Year	Type of Construction	Work done by		
		UP&L Co. Line Crews	Work done by Contractors	Total
1953	Transmission	\$ 168,601	\$ 478,159	\$ 646,760
1953	Distribution	1,192,966	525,393	1,718,359
1954	Transmission	514,143	530,202	1,044,345
1954	Distribution	1,203,193	249,457	1,452,650

AFFIDAVIT OF R. E. FORMAN

State of Oregon,
County of Multnomah—ss.

R. E. Forman, being first duly sworn, deposes and says:

I am an electrical engineer of Pacific Power & Light Company, and having had supervision of line construction for the years of 1950 to 1953, inclusive, have personal knowledge of facts herein set forth, or have taken all data submitted herein from the records of the Pacific Power & Light Company which have been kept in the regular course of business and which were derived from records and reports which were under my supervision for the period stated above.

Pacific Power & Light Company is a public company owning and operating an electric utility system, including power generating plants and associated works and facilities, transmission and distribution facilities serving residential, rural, commercial and industrial customers in the states of Oregon, Washington, Northern Idaho, Western Montana, and Wyoming.

Since the incorporation of Pacific Power & Light Company in 1910, Pacific Power & Light Company has engaged in constructing and maintaining electric transmission lines, including the changing of wires, insulators and crossarms. The changing of wires is hereinafter referred to as "reconductor-

ing." Throughout the period of time from 1910 to the present time, the Company has in general done most of the construction and reconductoring of transmission and distribution lines through the medium of its own employees directly employed by the Company. On occasions, however, when it is necessary to build or reconductor lines, and the Company cannot take care of the work with its own crews, the Company has contracted out the building or reconductoring of lines to contractors. The amount of such work done by the Company's own crews and that done by contractors varies from time to time, depending upon availability of manpower and the relative amount of construction undertaken at any one time. However, the Company has undertaken the majority of new construction work and of reconductoring with its own employees.

There is submitted herewith as Exhibit I, which by this reference is incorporated herein as though fully set forth herein, a chart showing the amount of construction and reconductoring undertaken respectively by Company employees and by Company contractors during the last five-year period. This chart applies to all lines constructed or reducted by the Company of a capacity of 24,000 volts or higher. This chart was prepared by me or under my direct supervision from the original records of the Company which are kept in the normal course of business.

Certain lines of a capacity below 24,000 volts are in service on the Company's system, but records of

construction and reconductoring work on such lines are maintained in a different manner than records on lines of 24,000 volts or higher, and as a consequence records of the actual mileage of such lines constructed or reconductored are not readily available. However, such work is normally undertaken by line crews of the district offices of the Company, and work by independent contractors will in general be considerably less in proportion to total work than is true with reference to work on lines of 24,000 volts or higher.

During the past five-year period, the Company has undertaken thirty-three separate construction or reconductoring projects, of which only six were contract. In terms of line miles, the Company has performed 67% of its new construction and reconstruction work on transmission lines with its own crews, the remaining 33% being done by contractors.

It is my understanding and belief that the practices followed by Pacific Power & Light Company as described herein are substantially the same as those normally pursued by other companies engaged in the public utility business.

/s/ R. E. GORMAN.

Subscribed and sworn to before me this 27th day of June, 1955.

[Seal] /s/ JOS. W. QUICK,

Notary Public for Oregon.

My Commission expires June 20, 1957.

EXHIBIT I

Pacific Power & Light Company

Transmission Line Construction, Including Reconductoring,
1950-1954

24 KV and Higher
(Approximate *)

Year	Company Crews		Contract	
	Miles	Cost	Miles	Cost
1950	2.64	\$ 169,478	4.06	\$ 108,159
1951	2.20	41,567	63.42	942,783
1952	25.20	670,990		
1953	68.39	924,226		
1954	40.14	583,950		
Total	138.57	\$2,390,211	67.48	\$1,050,942

*(Source of figures, records of Accounting Department showing year cost of construction taken into rate base, adjusted to show, approximately, progress of construction by year.)

AFFIDAVIT OF VIRGIL THOMPSON IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

State of Idaho,
County of Shoshone—ss.

Virgil Thompson, being first duly sworn on oath, deposes and says: That I am District Manager for The Washington Water Power Company, with offices located at Wallace, Idaho, and have personal knowledge of the facts herein set forth or have taken all data submitted herewith from the books

of The Washington Water Power Company which have been kept in the regular course of business and which are under my direct control and supervision.

This Affidavit is submitted in support of the defendant's Motion for Summary Judgment herein for the purpose of showing that there is in this action no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law.

That on July 11, 1954, I was District Manager for The Washington Water Power Company, with offices located at Wallace, Idaho, and that a 13,000 volt distribution line in Nine Mile Canyon was under my direct control and supervision, which line passed under a 110,000 volt line which Lewis Construction Company was reconductoring on behalf of The Washington Water Power Company and which 110,000 volt transmission line dropped into the said 13,000 volt line on or about July 11, 1954, resulting in the death of George Beedy.

That said 13,000 volt feeder line involved in the accident on July 11, 1954, supplied approximately 190 residential and commercial customers, the Day Rock Mine, the Sunset Lease Mine, the Jack Waite Mine, the Bear Top Mine, the Rex Mill, the Wallace Meat Packing Plant and the Burns Yack Lumber Company, and there was no alternative source of electric power to supply these customers.

That long prior to July 11, 1954, the Lewis Con-

struction Company was advised by me that The Washington Water Power Company could not and would not de-energize the 13,000 volt line while Lewis Construction Company was reconductoring the 110,000 volt line which passed over the 13,000 volt line, and the Lewis Construction Company at all times during the progress of its work anticipated and expected to reductor the 110,000 volt line without the power ever being cut off on the 13,000 volt Nine Mile feeder line.

That the decision that the power could not be cut on the Nine Mile feeder line was made by me in the exercise of my discretion and in the light of my knowledge of the conditions on the Nine Mile feeder line. Cutting the power on line serving mines results not only in work stoppages, but also in the flooding of mines which have water problems and results in serious problems to mine owners who are using forced ventilation to ventilate their mines; it creates spoilage problems for meat packing plants, causes shutdowns and economic loss to saw-mills and results in serious inconvenience to residential and commercial customers. All of these conditions existed on this line. The shutdown on a line of this sort is made only when absolutely essential and then only for the shortest possible time. The construction of a new line or the reconductoring of an old line which crosses over an energized line is not considered such an emergency as to justify the economic loss and inconvenience resulting from shutting down a line with the number and

type of customers that are located on this line. The Lewis Construction Company was experienced in working with electric transmission lines and represented that it was competent to work over and around energized electric circuits.

/s/ VIRGIL N. THOMPSON.

Subscribed and Sworn to before me this 13th day of June, 1955.

[Seal] /s/ B. J. OENNING,
Notary Public in and for the State of Idaho, Residing at Mullan.

Commission expires Sept. 1, 1956.

[Endorsed]: Filed July 5, 1955.

[Title of District Court and Cause.]

MINUTES OF JULY 7, 1955

Upon application of Glen Coughlan, one of the Counsel for the plaintiff, the Court being advised and good cause appearing, it is ordered that the time for filing affidavits in opposition to a Summary Judgment be, and the same is hereby enlarged, up to and including July 22, 1955.

[Title of District Court and Cause.]

CROSS-MOTION FOR SUMMARY
JUDGMENT

The plaintiffs, Guenith Opal Beedy and Cynthia Guen Beedy, by his next friend, Guenith Opal Beedy, by Thomas B. Payne and Glenn A. Coughlan, their attorneys, hereby make Cross-Motion to the Court to enter a summary judgment for the plaintiffs in accordance with the provisions of Rule 56 (b) and (c) of the Rules of Civil Procedure on the ground that the pleadings, affidavits of Jack P. Inman, Thomas Payne and Glenn A. Coughlan thereto attached, and the depositions of Ed Raunig, Jack P. Inman and Sam Hammar on file herein, show that plaintiffs are entitled to judgment as a matter of law.

Dated this 21st day of July, 1955.

/s/ THOMAS B. PAYNE,

/s/ GLENN A. COUGHLAN,

Attorneys for the Plaintiffs.

To: McNaughton & Sanderson and Paine, Lowe, Coffin, Ennis & Herman, Attorneys for Defendant:

Please Take Notice that plaintiffs will bring on for hearing the above Cross-Motion for Summary Judgment on the date set for hearing of defendant's Motion for Summary Judgment.

Dated this 21st day of July, 1955.

/s/ THOMAS B. PAYNE,

/s/ GLENN A. COUGHLAN,

Attorneys for the Plaintiffs.

AFFIDAVIT OF GLENN A. COUGHLAN IN
SUPPORT OF CROSS-MOTION FOR SUM-
MARY JUDGMENT BY PLAINTIFFS

State of Idaho,
County of Ada—ss.

Glenn A. Coughlan, being first duly sworn, de-
poses and says:

That I am one of the attorneys for the plaintiffs
in the above-entitled action.

This Affidavit is submitted in support of plain-
tiffs' Cross-Motion for summary judgment herein
for the purpose of showing that in this action there
is no genuine issue as to any material fact and that
plaintiffs are entitled to judgment as a matter of
law.

That examination of the affidavits submitted by
the defendant in this action, together with the
depositions of Edward Raunig and Jack P. Inman,
reveal that the defendant was not engaged in the
business of building power lines for profit, but that
they had engaged the Lewis Construction Company
as an independent contractor as is expressly shown
by the Exhibit, being a copy of the contract, at-

tached to the deposition of Ed Raunig, and that as such they had no control over the independent contractor, Lewis Construction Company.

That the defendant, The Washington Water Power, is not in the business of constructing power lines or reconductoring the same for pecuniary gain; that the work of this type which they do is merely incidental to their business of generating and selling electrical power.

That the depositions of Ed Raunig and Sam Hammar reveal that cut-offs were made on the job subsequent to the fatal accident.

That the affidavit of Virgil Thompson, local Manager of the Power Company, states definitely that the power company absolutely refused to cut off the power; as a result of this refusal, George Beedy met his death, and Jack P. Inman was seriously injured.

That this absolute refusal leaves no material fact in issue as to the defendant's negligence and cause of the accident in this case since the defendant had actual notice of the dangerous condition on this line and further notice of similar occurrences on the same job when other people were injured, and that their inspectors were present on the line during all these times, as appears by the deposition of Sam Hammar and affidavit of Jack P. Inman, and that in spite of notice refused to de-energize the line when so requested by Ed Raunig, Superintendent of Lewis Construction Company, on the

particular crossing where the fatal accident occurred, as appears by his deposition on file herein.

That the contract attached to the deposition of Ed Raunig shows that the Lewis Construction Company was an independent contractor of the defendant; that the affidavit of B. J. Lindsay attached to defendant's Motion for Summary Judgment shows that the work was being performed on defendant's premises; that the defendant under such circumstances owes the employees of their independent contractor a safe place to work; that the defendant deliberately breached this duty by their arbitrary refusal to cut off the power at the place of the fatal accident of George Beedy, as shown by the affidavit of Virgil Thompson, with knowledge of the extremely dangerous conditions existing and the knowledge of prior similar occurrences, as shown by the affidavit of Jack P. Inman attached to plaintiffs' Cross-Motion for Summmary Judgment, and the deposition of Sam Hammar filed in this cause.

That the plaintiffs are entitled under the record to a summary judgment leaving only the question of amount of damages for submission to the jury.

/s/ GLENN A. COUGHLAN.

Subscribed and Sworn to before me this 21st day of July, 1955.

[Seal] /s/ JOSEPH M. INHOFF, JR.,
Notary Public for Idaho,
Residing at Boise, Idaho.

AFFIDAVIT OF THOMAS PAYNE IN SUP-
PORT OF CROSS-MOTION FOR SUMMARY
JUDGMENT BY PLAINTIFFS

State of Idaho,
County of Shoshone—ss.

Thomas Payne, being first duly sworn, deposes and says:

That I reside at Wallace, Idaho, and am familiar with the site and power line between Government Gulch and Burke Sub-station and the line running up Nine-Mile Canyon where the fatal accident of George Beedy occurred.

That the area served by the Nine-Mile area line is very sparsely populated.

That the packing plant mentioned by Virgil Thompson in his Affidavit was not operating; that the mines operating in the area and served by The Washington Water Power were operating on a very limited basis with small working crews.

That the date on which the accident occurred killing George Beedy and injuring Jack Inman was Sunday and that the line could have been de-energized with a minimum of inconvenience to the users of power in that area.

That the defendant by virtue of its experience in handling the extremely dangerous commodity of high voltage electricity and having its inspectors upon the premises where the accident occurred, and

having knowledge of similar accidents immediately prior to the killing of George Beedy, and having actual knowledge of the dangerous condition existing, was grossly negligent in failing to comply with the request to de-energize the line which would have saved the life of George Beedy.

That the defendant is not engaged in the business of construction or reconductoring of power lines for pecuniary gain; that power line work done by the defendant is only incident to their function for pecuniary gain of generating and selling electrical power; defendant does not engage competitively with companies whose business is that of power line construction.

/s/ THOMAS PAYNE.

Subscribed and Sworn to before me this 16th day of July, 1955.

[Seal] /s/ F. C. KEANE,

Notary Public in and for the State of Idaho, Residing at Wallace, Idaho.

AFFIDAVIT OF JACK P. INMAN IN SUP-
PORT OF CROSS-MOTION FOR SUM-
MARY JUDGMENT BY PLAINTIFFS

State of Washington,
County of Spokane—ss.

Jack P. Inman, being first duly sworn, deposes and says:

That he is an equipment operator on transmission line construction for electric power companies and that he was so engaged in his occupation for the Lewis Construction Company of Great Falls, Montana, from May 12th to July 11, 1954, on a contract with the Washington Water Power for work between Government Gulch Sub-station to Burke Sub-station in Idaho.

This Affidavit is submitted in support of plaintiffs' Cross-Motion for Summary Judgment herein for the purpose of showing there is no genuine issue as to any material fact and that the plaintiffs are entitled to judgment as a matter of law.

That between the 20th day of May, 1954, and the 11th day of July, 1954, four previous accidents similiar in character to the one of July 11, 1954, occurred wherein the line being strung fell into a thirteen thousand volt line; that on at least three additional occasions accidents occurred wherein the line being strung fell either into trees, upon the ground and into energized wires; that on an occasion where the line being strung fell into a thirteen thousand-volt line on or about the 15th day of June, 1954,

east of the Kellogg cemetery three men were burned with electrical energy; that in each of the instances the Washington Water Power Company had actual notice at the time by their inspectors and officials being present or obtained knowledge of the occurrences subsequent thereto and prior to the 11th day of July, 1954; that the defendant by reason of such knowledge knew of the dangerous condition of the operation, including the operation at the place where the fatal accident occurred.

That the fatal accident occurred on Sunday and under conditions and circumstances wherein the power could have been cut off for a sufficient period of time to have permitted the crossing to have been made in safety with a minimum of inconvenience to everyone concerned and the saving of the life of George Beedy and the prevention of injury to myself.

That prior to the fatal accident during the stringing operations the power was cut off on other crossings.

That the defendant had all during the period of the job up to the fatal accident inspectors upon the line daily and they knew the conditions leading up to the fatal accident, the extremely dangerous operation and the numerous accidents which occurred; that under the conditions existing, the refusal of the defendant to de-energize the 13,000 volt line at the place of the fatal accident showed absolute disregard for safety of the men working on the job.

/s/ JACK P. INMAN.

Subscribed and Sworn to before me this 14th day of July, 1955.

[Seal]. /s/ TOM B. PAYNE,
Notary Public in and for the State of Washington,
Residing at:

[Endorsed]: Filed July 22, 1955.

[Title of District Court and Cause.]

MOTION TO STRIKE AFFIDAVITS 'ON
MOTION FOR SUMMARY JUDGMENT

Comes Now the defendant, The Washington Water Power Company, and moves that the affidavits of Glenn A. Coughlan, Thomas Payne and Jack P. Inman in support of plaintiffs' Cross-Motion for Summary Judgment, and each and every part thereof, be stricken, on the ground and for the reason that the affidavits are not made on personal knowledge and do not set forth such facts as would be admissible in evidence or do not show that the affiant is competent to testify as to the matters therein; that the statements in said affidavits are matters as to opinion, belief or conclusions of law.

Dated this 4th day of August, 1955.

McNAUGHTON & SANDERSON,
PAINE, LOWE, COFFIN,
ENNIS & HERMAN,

By /s/ ALAN P. O'KELLY,
Attorneys for Defendant.

[Endorsed]: Filed August 4, 1955.

[Title of District Court and Cause.]

MINUTES OF AUGUST 5, 1955

This cause came on regularly this date in open court for hearing on plaintiffs' motion for summary judgment and defendant's cross-motion for summary judgment, Glenn A. Coughlan appearing for the plaintiff's and Alan P. O'Kelly appearing as counsel for the defendant.

After a discussion by counsel of the respective parties, it was ordered that the depositions of Jack P. Inman, Ed. F. Rainy, Ruben Liddell Brown and Sam Hammar be published and it was further ordered by the Court that this matter be taken under advisement.

[Title of District Court and Cause.]

MEMORANDUM DECISION

Healy, Acting District Judge.

Plaintiffs and defendant have each moved for summary judgment. The motions have been briefed and orally argued and submitted for decision. The court agrees with counsel that no material issue of fact remains to be determined and that the case is ripe for decision on the motions.

The motions of defendant, Washington Water Power Co., is granted, and judgment in its favor is directed to be entered accordingly.

[Endorsed]: Filed August 15, 1955.

In the District Court of the United States, in and
for the District of Idaho, Northern Division
No. 1999

GUENITH OPAL BEEDY and CYNTHIA
GUEN BEEDY, by His Next Friend, GUEN-
ITH OPAL BEEDY,

Plaintiffs,

vs.

THE WASHINGTON WATER POWER CO.,
a Corporation,

Defendant.

SUMMARY JUDGMENT

The motion of the defendant for summary judgment and the cross-motion of the plaintiffs for summary judgment, pursuant to Rule 56 of the Rules of Civil Procedure having been presented, and the Court being fully advised:

The Court finds that the defendant is entitled to a summary judgment as a matter of law.

It Is, Therefore, Ordered and Decreed that defendant's motion for summary judgment be and the same is hereby granted; that the plaintiffs have and recover nothing by their suit; that the defendant, The Washington Water Power Company, recover its costs and charges in its behalf expended.

Dated this 24th day of August, 1955.

/s/ WILLIAM HEALY,
Acting District Judge.

[Endorsed]: Filed August 26, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Guenith Opal Beedy and Cynthia Guen Beedy, by his next friend, Guenith Opal Beedy, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Summary Judgment entered in this action on August 26, 1955.

Dated this 7th day of September, 1955.

/s/ THOMAS B. PAYNE,

/s/ GLENN A. COUGHLAN,

Attorneys for Appellants.

[Endorsed]: Filed September 8, 1955.

United States Court of Appeals
for the Ninth Circuit

File No. 1999

GUENITH OPAL BEEDY and CYNTHIA GUEN
BEEDY, by His Next Friend, GUENITH
OPAL BEEDY,

Appellants,

vs.

THE WASHINGTON WATER POWER CO.,
a Corporation,

Respondent.

STATEMENT OF POINTS ON WHICH AP-
PELLANTS INTEND TO RELY ON
APPEAL

Comes Now the Appellants and make the follow-
ing statement of points upon which they intend to
rely upon the appeal taken by them to the Court
of appeals for the Ninth Circuit in the above-en-
titled cause:

I.

That the Court erred in finding that the defendant
was entitled to a Summary Judgment as a matter
of law.

II.

That the Court erred in entering Judgment that
plaintiffs have and recover nothing by their suit,
and that the defendant, The Washington Water
Power Company, recover its costs and charges in
its behalf expended.

III.

That the defendant was not the employer of the deceased under the Idaho Workmen's Compensation Law so as to preclude a common law action by the wife and child of deceased.

IV.

That the Cross-Motion of the Plaintiffs for summary Judgment should have been granted.

V.

That the records show notice to the defendant of prior similiar occurrences to the one by which George Beedy met his death; that the defendant had been requested to cut off the power which would have prevented the accident and that in spite of the notice and request above referred to, defendant refused to cut off the power as a result of which deceased was killed.

VI.

That the Court erred in denying the plaintiffs right to trial by jury of the issues of fact set up in the complaint; and the issues of fact improperly raised by the defendant in its Motion and Affidavit, that is, to the effect that it was in business of repairing and constructing power lines.

/s/ GLENN A. COUGHLAN,

/s/ THOMAS B. PAYNE,

Attorneys for Appellants.

[Endorsed]: Filed September 8, 1955.

[Title of District Court and Cause.]

AFFIDAVIT OF MAILING

State of Idaho,
County of Ada—ss.

Aurrel Coughlan, being first duly sworn, deposes and says:

That she is over the age of twenty-one and resides in Boise, Idaho, and is employed as secretary in the office of Glenn A. Coughlan, Attorney at law; that there is a United States Post Office located in the respective towns mentioned hereafter; that there is a daily mail service between Boise, Idaho, and said places.

That the affiant on the 8th day of September, 1955, served copies of the attached Notice of Appeal, Designation of Contents of Record on Appeal and Statement of Points on Which Appellants Intend to Rely on Appeal by enclosing copies of said Notice of Appeal, Designation of Contents of Record on Appeal and Statement of Points on Which Appellants Intend to Rely on Appeal in an envelope properly addressed to:

McNaughton & Sanderson, Attorneys at Law,
Wigget Building, Coeur d'Alene, Idaho;

Paine, Lowe, Coffin, Ennis and Herman, attorneys at law, 602 Spokane & Eastern Bldg.,
Spokane 5, Washington,

with the proper postage thereon, and deposited the same in the United States Post Office in Boise, Idaho.

/s/ AURREL COUGHLAN.

Subscribed and Sworn to before me this 8th day of September, 1955.

[Seal] /s/ GLENN A. COUGHLAN,
 U. S. Commissioner for Idaho,
 Residing at Boise, Idaho.

[Endorsed]: Filed September 8, 1955.

[Title of District Court and Cause.]

File No. 1999

DEPOSITION OF ED F. RAUNIG

Be it remembered, that the Deposition of Ed F. Raunig, the witness above named, came on regularly for hearing before me, R. L. Roberston, a Notary Public for the State of Montana, in my office on the third floor of the Cascade County Court House in the City of Great Falls, Montana, on the 8th day of January, 1955, at the hour of 2:00 p.m. of said day, pursuant to the Notice to Take Deposition Upon Oral Examination on file in said cause, a copy of which said Notice is hereto annexed. The Plaintiffs were represented by their counsel, Thomas Payne, Esq., attorney-at-law of Wallace, Idaho, and Glenn A. Coughlan, Esq., attorney-at-law of Boise, Idaho, and the defendant was represented by its counsel, Alan P. O'Kelly, Esq., attorney-at-law of the firm of Paine, Lowe, Coffin, Ennis & Herman of Spokane, Washington, and the following proceedings were had, to wit:

(Deposition of Ed. F. Raunig.)

Mr. Coughlan: Mr. O'Kelly, I presume that it may be stipulated that this Deposition that we are about to take may be used in either or both of the cases, Beedy vs. Washington Water Power, File 1999, and Inman vs. Washington Water Power, File No. 2000, and that the deposition may be used at the trial as provided for in the Federal Rules, and in particular Rule 26?

Mr. O'Kelly: It is so stipulated.

MR. ED F. RAUNIG

being called as a witness in behalf of the Plaintiffs, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Coughlan:

Q. Will you please state your name, sir?

A. Ed Raunig.

Q. Where do you reside? A. Great Falls.

Q. Montana? A. Great Falls, Montana.

Q. And what is your position of employment, Mr. Raunig?

A. Superintendent of the Lewis Construction Company.

Q. How long have you been so employed?

A. About ten years.

Q. Were you so employed on July 11, 1954?

A. Yes, sir. [2*]

Q. And are still so employed? A. Yes, sir.

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

(Deposition of Ed. F. Raunig.)

Q. Will you just briefly describe the nature of your employment, Mr. Raunig? What do you do for the company?

A. I supervise all our crews, our lines crews. I have a foreman under me, but I supervise.

Q. And what is the general nature of your work?

A. Power line maintenance and construction.

Q. Now, what was the Lewis Construction Company employment on the 11th of July, 1954?

A. The 11th of July?

Q. Yes.

A. Was that the day of the accident?

Q. Yes, but what I had in mind is your general job at that time.

A. Well, we had one job in Idaho for the Washington Water Power Company.

Q. And what was the nature of that job?

A. We were replacing crossarm insulators and replacing conductors on a line from Government Gulch, Idaho, to Burke, Idaho.

Q. Was there a written contract with Washington Water Power, Mr. Raunig?

A. Yes, there was.

Mr. Coughlan: I wonder, Mr. O'Kelly, if we might have this marked and introduced and substitute a copy of it?

Mr. O'Kelly: That is satisfactory with me.

Q. Mr. Raunig, handing you Plaintiffs' Exhibit No. 1 for [3] identification, will you just generally state what that is?

(Deposition of Ed. F. Raunig.)

A. That is the contract between The Washington Water Power Company and the Lewis Construction Company.

Q. And is it signed by you?

A. Yes, it is signed by me.

Q. And it is signed by some representative in behalf of Washington Water Power?

A. Yes, it is.

Mr. Coughlan: We would now offer Plaintiffs' Exhibit 1 for identification in evidence, and I understand a copy may be identified and substituted in its place?

Mr. O'Kelly: There is no objection to substituting a copy, subject to a check against the original.

Q. Then, handing you the copy marked Plaintiffs' Exhibit 1, Mr. Raunig, is that a copy of the original contract, of the original agreement between your company and Washington Water Power?

A. Yes, it is.

Mr. Coughlan: And we now offer a copy of Plaintiffs' Exhibit 1 in evidence.

Mr. O'Kelly: No objection.

Q. Mr. Raunig, where were you working on the 11th of July, 1954?

A. Is that the day of the accident?

Q. Yes.

A. We were—well, I had crews scattered all over, but the crews involved in this accident was working approximately two miles Northwest of Wallace. [4]

Q. And who was present in this particular crew?

(Deposition of Ed. F. Raunig.)

A. Well, I really don't know all the names any-more because we had so many strange men there all the time.

Q. To refresh your memory, was Mr. George Beedy a member of that crew? A. Yes, sir.

Q. And Mr. Jack Inman, was he present also?

A. Yes, he was.

Q. And Mr. Reuben Brown, was he also there?

A. Yes, sir.

Q. Mr. Bill Eliopolous? A. Yes.

Q. And Cliff Laughry, was he also there, Mr. Raunig? A. Yes, I believe he was.

Q. And you were also present? A. No, sir.

Q. Where were you at that time?

A. I was approximately three miles away on a line, but about eight miles away by road.

Q. Had you been there at any time during that day? A. Yes, I was.

Q. Approximately when was that?

A. I was there about two hours previous to the accident.

Q. And what type of work was being done at that time? A. They were sagging wire.

Q. Between what points?

A. Between Station 104 and Station 116.

Q. Now, could you just generally describe the nature of the terrain there at that place, Mr. Raunig?

A. Well, it was a pretty steep slope from 104 to 116, and pretty brushy. [5]

Q. And were you stringing wire on power poles

(Deposition of Ed. F. Raunig.)

between these two stations? Is that what you were doing?

A. The wire was already strung. We were sagging it, or tightening it.

Q. That is preliminary to putting it in in final place, is that correct? A. Yes.

Q. Now, what was the manner in which this sagging was being done?

A. Well, you take a winch truck and you run your winch up the pole and through a pulley, or what we call a "snatch block," and then it is fastened onto the conductor with what we call a "grip," and the lineman reaches out from the pole and gets it out for approximately three feet.

Q. Then, if I understand you correctly, you had a winch on a truck there? A. Yes, sir.

Q. And the winch is located in the back of the truck, is that right?

A. Yes, sir, back of the cab. The winch itself is mounted right back of the cab.

Q. And the line is hooked onto the winch after it runs through this pulley, is that correct?

A. Well, the line is wrapped around the winch drum then, and we send up the pole through a snatch block onto a grip and the grip fastens onto the wire.

Q. Now, the lines then were being tightened and released by means of this winch, is that correct?

A. Pulled up. [6]

Q. Pulled up by means of the winch?

A. By means of the winch.

(Deposition of Ed. F. Raunig.)

Q. Now, the line there at that place which you were sagging runs—your truck with the winch on it was sitting on the top of the hill, was it not?

A. Yes.

Q. And the line ran down into the valley, is that correct, the transmission line which you were sagging?

A. Both ways from this ridge.

Q. It ran both ways?

A. Yes.

Q. And was it attached then on the other side of the valley? The line, I mean?

A. Which end do you refer to?

Q. Then end of the line which crossed another power line.

A. It was already attached to a pole, yes.

Q. And was there a power line which ran beneath the line which you were sagging?

A. Yes, sir.

Q. And which direction, generally, if you know, did that line run?

A. Well, I can't tell directions there. I mean, I wouldn't know directions, but it went just a square crossing underneath.

Q. At right angles?

A. At right angles.

Q. And was that at the bottom of the valley, approximately?

A. It was not exactly in the bottom. There was another station below it. [7]

Q. Now, the line that was running at right angles to the line which you were sagging, is that a line which runs up a gulch known as Nine-Mile Gulch?

A. Yes.

(Deposition of Ed. F. Raunig.)

Q. And do you know who owns that line?

A. Well, I believe The Washington Water Power Company owns it.

Q. And do you know what the voltage of that line is?

A. I was informed it was 13,000 volts.

Q. And was it energized at the time you were doing this work?

A. Yes, sir.

Q. Now, prior to the making of the crossing where Mr. Beedy was killed, had you contacted anyone with respect to de-energizing this line running up Nine-Mile Gulch?

A. Yes, I did. Just in a matter of form I asked them if there was any chance.

Q. And who did you contact with reference to that?

A. I talked to Mr. Hammar and also Mr. Thompson. Just as a matter of form I asked him.

Mr. O'Kelly: Could we place the time and place of the accident better?

Q. When did you make this request, or these requests, to the best of your recollection?

A. Well, I imagine a couple days before we got to this point.

Q. Now, where did you talk to these gentlemen about this?

A. Well, if I recall right, I talked to Mr. Hammar out [8] on the job somewhere, and then I met Mr. Thompson on the street, but I had been informed before that it could not be killed, but as a matter of form I always ask if there would be any changes.

(Deposition of Ed. F. Raunig.)

Q. Now, will you identify Mr. Hammar. Who is he?

A. He was the inspector for The Washington Water Power.

Q. Do you know his first name? Is it Sam Hammar? A. Yes, it is.

Q. And will you identify Mr. Thompson? Who is he?

A. He is the manager of The Washington Water Power in Wallace.

Q. Now, had you made other requests along that line, for them to kill the lines, prior to this time?

A. Well, we talked about it and there was some lines that only involved one customer, or where they had a loop feed—in other words, where they could kill a section of the line and still feed the customer. Then we killed the line.

Q. Would you say, then, that there had been several requests prior to this occurrence on July 11, 1954?

Mr. O'Kelly: I think you are kind of leading the witness. I think you can ask him how many requests or something like that.

Mr. Coughlan: Well, I will withdraw it.

Q. How many requests did you make prior to July 11, 1954, that lines be killed, Mr. Raunig?

A. Well, I wouldn't know, because just in the process of the work we would talk about if there was any chance of killing it, and Washington Water Power Company would try to get a kill if they

(Deposition of Ed. F. Raunig.)

could. In [9] fact, they made me out a slip and wrote down whatever crossings they could kill and what crossings we would have to guard and protect their lines.

Q. Now, did you make any additional, special effort to have the line killed where the crossing was to be made when the accident occurred?

A. No, we didn't make no special effort.

Q. Did you go with anyone to discuss the matter with any other persons?

A. Not on that crossing.

Q. On prior crossings had you? A. No.

Q. Did you go to any of the mine owners at any time? A. Not prior, but after.

Q. Afterwards you did. Did you offer to do this work in any particular way, Mr. Raunig, in consideration of having the lines killed? A. No.

Q. Did you ever state to the Power Company officials that you would work at night or early in the morning if they would make a kill on the line?

Mr. O'Kelly: It is a leading question.

A. No.

Q. Mr. Raunig, were there any employees or officials of The Washington Water Power present and inspecting the work on this job as you went along?

A. They had Mr. Hammar there for inspector and he was inspecting so he would do it according to spec, not the way you done it.

Q. And he was then on the job all the time, is that correct? [10]

(Deposition of Ed. F. Raunig.)

A. Well, he was somewhere up and down the line all the time. We had four or five crews along the line and he couldn't be with every crew at all times.

Q. Was there anyone else there from the Power Company besides Mr. Hammar?

A. Not on the job all the time.

Q. Now, what occurred there on the 11th of July, 1954, by way of an accident?

A. What do you mean? You mean what caused the accident?

Q. Well, yes, what happened?

A. I wouldn't know. I wasn't there. All mine was hearsay.

Q. Did you subsequently come back to the location?

A. Yes.

Q. And what did you observe when you got back there, Mr. Raunig?

A. Well, when I got up to the hill, why, this one man was—they was still working on him.

Q. Which man was that?

A. Beedy. They were still working on him. The fire department and the police department was up there, and the sheriff, and our men were working on him also, and Inman had already been taken to the hospital.

Q. Was Mr. Beedy dead at that time, when you got back?

A. Well, I wouldn't know. They were still working on him and they worked on him, I would say, an hour after I was there. After the doctor

(Deposition of Ed. F. Raunig.)

and the firemen gave up, our boys still wouldn't give up.

Q. You don't know then whether Mr. Beedy died or not? [11]

A. Yes, I know. That is, I know he died, but I wouldn't know if he was dead when I got there.

Q. He died shortly after, then, at any rate, is that correct?

A. Well, all I know is finally the sheriff said—and the coroner was there—that there was no use working on him any more, that he was dead.

Q. Now subsequent to the occurrence on July 11, 1954, did you make other crossings over Washington Water Power lines?

A. Yes, we did.

Q. And were there kills made on those?

A. On some, and some not.

Q. Mr. Raunig, do you recall making a statement with regard to this occurrence?

Mr. O'Kelly: I object to the form of that question. It is leading. It is cross-examination of your own witness.

Q. Well, this is for purposes of refreshing your memory, Mr. Raunig. Did you make and sign a statement concerning this matter to me?

A. Yes.

Q. Mr. Raunig, I hand you a statement written here. Is that signed by you; is that your signature?

A. Yes, it is.

Q. Now, referring to the second page of that, concerning——

(Deposition of Ed. F. Raunig.)

Mr. O'Kelly: I am going to object to this form of questioning. I don't know what is on there or what you are leading up to, but he is your witness and I think he should be asked definite questions and [12] not cross-examined at this time.

Q. Well, Mr. Raunig, did you ever make the statement that you talked with mine owners and Power Company officials to get clearance to shut down; that you did that on all crossings? "We asked if we could do it in the early morning or late at night." Do you recall that statement?

Mr. O'Kelly: I still don't see the purpose of that. I don't feel it is proper questioning.

Mr. Coughlan: You may answer. That will be taken care of later.

Mr. O'Kelly: If you want to, go ahead and answer it. That is all right.

A. We talked to some, yes.

Q. And you made the request if you could do it early in the morning or late at night?

A. It didn't seem to make any difference to those mines. The water problem, that was their big problem, so you didn't do any good, whether you wanted to do it in the morning or any other time.

Q. Yes, but what I am getting at is you made the request? A. Yes.

Q. Now, along that line, did you offer to make any other arrangements for making these crossings if they would shut down, such as to time and pay of your men? A. I don't remember.

Q. Did you ever tell them that, or ask them, that

(Deposition of Ed. F. Raunig.)

if they would close at three in the morning you would pay your men double?

Mr. O'Kelly: Object to that question. It is [13] leading and it is cross-examination.

Q. Well, I will ask you then, Mr. Raunig, if that statement appears in the statement that you have made?

Mr. O'Kelly: I object to that, too. I don't think that is proper questioning. It is still cross-examination of your witness. If he wants to read the statement and then testify, I have no objection to using it to refresh his recollection, but I don't think he should be cross-examined about a statement secured by you, and on direct examination.

Q. Well, let me rephrase that question. Did you offer to make any special arrangements of any kind in consideration of their shutting off their power on these lines you were crossing?

A. I believe we did on some, but not on this one involved here.

Q. What special arrangements were those that you offered to make?

A. We just talked whether we could do it in the morning, and it didn't make and difference to the mines or any of the customers whether it was in the morning, and it didn't make any difference to the power off.

Q. But did you offer any other thing besides what you have said, with respect to the pay of your men?

(Deposition of Ed. F. Raunig.)

A. Well, if we would work nights, naturally we would have to pay double time.

Q. I presume your answer, then, is that that was your offer?

Mr. O'Kelly: Well, I think he answered the question. [14]

A. Not on this crossing.

Q. On other crossings?

A. Not prior to this. We did make some after that, on double time.

Mr. Coughlan: That is all. You may examine.

Cross-Examination

By Mr. O'Kelly:

Q. Mr. Raunig, prior to bidding this job, did you have any discussion with Washington Water Power Company officials relative to whether these crossings were to be worked hot or be "killed," as you term it?

A. The first time that I ever met Mr. George and Mr. Gamble, that was the first day I went over to look at the job, and they took me over the job and took me to all these crossings, and they told me that every one of these crossings would have to be made hot. I mean, I was informed at that time that every crossing would have to be considered hot, that we would have to make them hot and we should figure the job accordingly, and they also definitely took me up to this one crossing, because it was right on a nice road. In fact, they took me to most of them,

(Deposition of Ed. F. Raunig.)

but I was informed that all the crossings would have to be made hot the first time I ever looked at the job.

Q. And your bid was made on that basis, was it?

A. Yes, sir.

Q. Was any discussion ever had prior to starting the job as to de-energizing any of the crossings?

A. What was that?

Q. Prior to starting the job did you have any discussion [15] relating to killing the line, or de-energizing it? A. No.

Q. When was the first discussion had relative to killing any crossings?

A. Well, after we had started the job, as we went along I was informed that with the progress of the job, which was very slow, if there was any that they could possibly kill they would kill them to help us that much.

Q. About that time did you have a discussion with several representatives of The Washington Water Power Company as to which lines could or could not be killed?

A. Yes, and they made——

Q. Who was present at that discussion, do you remember?

A. Mr. Hammar and Mr. Thompson.

Q. Was Mr. George there?

A. And Mr. George.

Q. Any others that you remember?

A. I wouldn't know for sure if Mr. Gamble was there or not.

(Deposition of Ed. F. Raunig.)

Q. Was a Mr. Berquist there, by any chance?

A. Yes, he was.

Q. And at that time did you go through all the crossings that you had left to do?

A. Yes. We have what we call a "work sheet." Every station is numbered and on this work sheet it would tell what crossing is a 13,000 volt crossing or a 2,300 volt crossing or a 7,200 volt crossing, and at that time we wrote down "guard." That meant to guard it, that you couldn't kill it, and on the next one [16] they would write "kill," and all the way down on this work sheet.

Q. And what did this work sheet show as to this Nine-Mile crossing involved in this accident?

Mr. Coughlan: Well, now, just a moment. We object to the witness testifying about some document that is not here in evidence, and as to what it contains, on the basis that his testimony would not be the best evidence. The document would be the best evidence.

Q. Do you have that document, Mr. Raunig?

A. No, I don't.

Q. Is that document still in existence, do you know?

A. I wouldn't know for sure.

Q. Do you know where it is?

A. Well, I believe I either destroyed it or I know yet where it is. It is either destroyed or it would be in some of my files.

Q. At the discussion you had at that time, was it stated whether or not this Nine-Mile crossing was to be worked hot or was to be killed?

(Deposition of Ed. F. Raunig.)

Mr. Coughlan: Well, now, just a second. Would you fix the time and place of this particular discussion?

Q. Could you remember about when—the time and place where this conversation took place that we are discussing?

A. Well, I believe we were just out on the job somewhere, after we had worked approximately three weeks, and this discussion took place right out on the job. [17]

Q. It wasn't in Wallace at the manager's office at the Water Power Company, or do you remember for sure? A. I don't remember for sure.

Q. But you know there was a conference which took place two or three weeks after the job started, to the best of your recollection?

A. Yes. That is the time we went through all the crossings. That is, we went over all the crossings, the discussion about all the crossings, and I was told which definitely could not be killed and which could be killed and which might be killed.

Q. And what was the discussion relative to the Nine-Mile crossing?

A. That one crossing was definitely stated it could not be killed.

Q. You speak of erecting guards at crossings that were to be worked hot. Would you explain what a guard is?

A. Well, there is different types of guard structures. You can put up two poles with an arm across it, or you can put up four poles, two poles on each

(Deposition of Ed. F. Raunig.)

side of this crossing with an arm across, and then again you can use a single pole and hang blocks up on this single pole.

Q. Whenever you would work a crossing hot, you would put a guard structure on it, is that correct? A. Yes.

Q. And if you worked it when it was killed or not energized, then you would not put a guard structure on it, is that correct?

A. That's right. [18]

Q. Did you have a guard structure at this Nine-Mile crossing? A. Yes.

Q. Was that guard structure in use at the time of the accident? A. No, sir.

Q. Can you explain why the guard structure was not in use at that time?

Mr. Coughlan: Now, just a moment. Just for the purpose of the record, we object to this line of questioning on the ground that it is not proper cross-examination, not having been covered in anywise on direct.

Mr. O'Kelly: I think the direct was broad enough to cover it. You may go ahead and answer it, subject to the objection.

Mr. Payne: I object to that also on the ground that Mr. Raunig was not even present at the time, as he testified in the direct. He hadn't been present there for approximately two hours before, so would he actually know if it was in use or not then, or anything else?

(Deposition of Ed. F. Raunig.)

Q. Well, do you know it was not in use, Mr. Raunig? A. Yes, sir.

Q. Was it away from the guard at the time you saw it about two hours before the accident? Was it out of the guard?

A. Yes, sir. The wire was already pulled in and as we started to pull this wire in, after we had set the guard structure, the wire would not come down to [19] this guard structure. It stayed up in the air around twenty or twenty-five feet above the guard structure, and we figured that the big risk of getting to the 13,000 was over after the wire was pulled in.

Q. You were in general charge of that work, is that correct? A. Yes.

Q. And do you know of your own knowledge it was not in the guard structure at the time?

A. Yes, sir, I know it was not.

Q. Who determined what type of guard structure was to be used at any crossing? A. I did.

Q. Who determined whether the guard structure should be used or would be used in a particular manner?

Mr. Coughlan: We object to this line of questioning upon the ground it is not proper cross-examination, not covered on direct.

Q. You may answer the question.

A. I did.

Q. You stated on direct that you asked as a matter of form to have this particular line de-energized. Will you state where and when this formal request was made?

(Deposition of Ed. F. Raunig.)

A. Well, just on the job.

Q. Or did you make a formal request? Let's put it that way. Did you make a formal request to de-energize that line?

A. I didn't make a request to de-energize it. I asked them if—I said, "I know I am supposed to make this [20] crossing hot, but is there any changes, any chance of getting it killed." I didn't actually say I wanted it.

Q. About what time of the day did this accident occur, did you state, or do you remember? Was it in the forenoon, around noon, or the afternoon, if you remember?

A. I believe it was right after lunch.

Q. You stated that you had completed pulling the wire through, or this sagging, at this time. Which part of the operation, the pulling or the sagging, is considered to be the dangerous part of the operation?

A. Well, I would consider the pulling in.

Q. As being the more dangerous?

A. Yes.

Q. About how long did it take you to make this crossing, including both pulling and sagging?

A. To complete the pulling in and the sagging would take from twelve to thirteen hours.

Q. Do you remember whether that is the amount of time that was taken on this one, or is that just a guess on your part?

A. No, I figured it took us about seven—I believe about seven hours to pull the wire in, and it

(Deposition of Ed. F. Raunig.)

usually takes us around four to five hours to sag that amount of wire.

Q. You haven't referred to your records lately to know exactly how much time was taken on this particular crossing? A. No. [21]

Q. So that your answer at this time is just your best estimate at this time, is that correct?

A. Yes, I believe it is pretty close.

Mr. O'Kelly: That is all.

Redirect Examination

By Mr. Coughlan:

Q. Mr. Raunig, do you know what caused the accident that morning?

A. No, I don't. I don't honestly know.

Q. Do you have an opinion about it?

Mr. O'Kelly: Well, if this is a deposition for the introduction, for the purpose of introduction at the trial, I think you would have to build a foundation for any opinion. I object to the form of the question.

Q. Well, Mr. Raunig, how many years have you been engaged in the electrical pole line construction work? A. 27 years.

Q. And is that generally the type of work you were doing on this job for the Washington Water Power? A. Yes.

Q. And you have been a superintendent for a number of those years, have you? A. Yes.

Q. How many?

(Deposition of Ed. F. Raunig.)

A. Oh, I would say about eight.

Q. And it is your job to supervise the crews, is it, that do this kind of work? A. Yes.

Q. And they are generally under your supervision? [22] A. Yes.

Q. Now, then, will you state whether or not you have an opinion as to what caused the accident on July the 11th, 1954, where Mr. Beedy lost his life?

Mr. O'Kelly: I still object on the ground there is no basis laid or foundation laid for any opinion. I will grant Mr. Raunig's qualifications, but that doesn't lay a foundation for an opinion question.

Q. Mr. Raunig, further enlarging, did you make an investigation following the accident?

A. Yes, we did, but in a case like that you just can't determine exactly what caused the accident.

Q. You made such an investigation?

A. Yes.

Q. And what did your investigation reveal?

A. Well, I could never tell honestly what caused it.

Q. Did you examine the place where the power line you were sagging crossed the line running up Nine-Mile Gulch? A. Yes.

Q. And what did you observe there, Mr. Raunig?

A. Just observed the burned spot on the wire.

Q. On both wires?

A. On this one wire, this new wire.

Q. That you were sagging, is that correct?

A. Yes.

(Deposition of Ed. F. Raunig.)

Q. And would that be at the place where it made the crossing?

A. Where it made contact with the 13,000.

Q. Mr. Raunig, following the examination there of the place where the two wires crossed, and observing the [23] burns on the wire there, do you think that had any connection with the accident?

A. Yes.

Q. You believe that was the result of the accident, the cause of the accident?

A. Well, where it made contact, yes.

Mr. Coughlan: That is all.

Recross-Examination

By Mr. O'Kelly:

Q. I don't know whether I asked this or not: If the wires had been in this guard structure at the time of the accident, could the accident have happened?

A. I don't believe so.

Mr. O'Kelly: That is all.

Mr. Coughlan: Just for the purpose of the record, I would like to move that the last answer be stricken for the purpose of objection, and then object to the question upon the ground that it is improper cross-examination, not having been covered in anyway on direct. That is all.

(Witness excused.)

/s/ ED. F. RAUNIG.

(Deposition of Ed. F. Raunig.)

Subscribed and sworn to before me this 11th day of January, 1955.

[Seal] /s/ R. L. ROBERTSON,

Notary Public for the State of Montana, Residing
at Great Falls, Montana.

My commission expires April 4, 1955. [24]

State of Montana,
County of Cascade—ss.

I, R. L. Robertson, a Notary Public for the County of Cascade, State of Montana, do hereby certify that Ed F. Raunig was by me first duly sworn to testify the whole truth, and that the above deposition by him signed was recorded stenographically by me personally and by me reduced to type-writing.

I Further Certify, That the said deposition was examined and read over by said deponent and was signed by said deponent in my presence and that the said deposition constitutes a true record of the testimony given by said witness.

I Further Certify, That the said deposition was taken at the time and place specified in the annexed copy of Notice of Taking Deposition, and that the taking of the said deposition commenced on the 8th day of January, 1955, at 2:00 o'clock p.m. and was completed at 3:00 o'clock p.m. on the afternoon of said day.

(Deposition of Ed. F. Raunig.)

I Further Certify, That Thomas Payne of Wallace, Idaho, and Glenn A. Coughlan of Boise, Idaho, appeared as attorneys for the plaintiffs, and that Alan P. O'Kelly of Spokane, Washington, appeared as attorney for the defendant, and that each were present during the entire examination.

I Further Certify, That I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor am I financially interested in the same.

Dated this 11th day of January, 1955.

[Seal] /s/ R. L. ROBERTSON,
Notary Public for the State of Montana, Residing
at Great Falls, Montana.

My commission expires April 4, 1955.

[Endorsed]: Filed January 14, 1955.

[Title of District Court and Cause.]

DEPOSITION OF JACK P. INMAN

Appearances:

GLENN A. COUGHLAN,
Attorney at Law, and
THOMAS B. PAYNE,
Attorney at Law,

Appearing on Behalf of the Plaintiffs.

(Deposition of Jack P. Inman.)

ALAN P. O'KELLY,

Attorney at Law,

Appearing on Behalf of the Defendant.

(Whereupon, at ten o'clock, a.m., the above-entitled matter came on pursuant to stipulation of the parties for the taking of the Pretrial Deposition of Jack P. Inman before Oren J. Casey, Certified Shorthand Reporter, and a Notary Public.)

Mr. O'Kelly: This deposition of Jack Inman—is that your full name?

The Witness: Yes.

Mr. O'Kelly: Is being taken on stipulation of the parties at this time and place under the Rules of Federal Court in connection with the case of Guenith Opal Beedy and Cynthia Guen Beedy, by his next friend, Guenith Opal Beedy, versus The Washington Water Power Company, a corporation. It is stipulated that the deposition may be taken at this time and place?

Mr. Coughlan: It is agreeable.

JACK P. INMAN

called as an adverse witness on behalf of the defendant, being duly sworn, testified as follows:

Cross-Examination

By Mr. O'Kelly:

Q. Will you state your name, please?

A. Jack P. Inman.

(Deposition of Jack P. Inman.)

Q. And your address?

A. 6905 East 6th, Spokane, Washington.

Q. What is your occupation, Mr. Inman?

A. Equipment operator, high lines.

Q. What does that involve; what sort of work is that?

A. Well, stringing wire, sagging wire, building roads, digging pole holes with mechanical equipment. [2*]

Q. For whom do you work? A. Pardon?

Q. And for whom do you work—do this kind of work? A. Different contractors.

Q. In other words, you work for contractors who are in the business of building transmission lines for electric power companies? A. Yes.

Q. And how long have you been in that business?

A. Four years this last time, I think—that is approximate.

Q. About when did you start?

A. About 1951 with high lines.

Q. Were you doing something different with electricity before that—electrical construction, rather?

A. No, I had worked telephone before that.

Q. Have you participated in the construction of very many high lines or what is the extent of your experience?

A. Well, I have been working quite steady for the last four years up until last winter.

Q. Have you worked for various contractors?

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Deposition of Jack P. Inman.)

A. Yes.

Q. Have you worked on lines for different power companies, too?

A. Yes. [3]

Q. Which power companies?

A. Bonneville, Washington Water Power, REA. That would be it.

Q. About July 1st, 1954, for whom were you working?

A. Lewis Construction Company.

Q. And what were you doing at that time?

A. I was hired out through the union hall as an operator.

Q. What does an operator do?

A. Runs heavy equipment or winch trucks—boom trucks. As I stated before—anything that has to do with operating their equipment that they have on the line.

Q. What sort of work was the Lewis Construction Company doing?

A. Line work.

Q. For whom?

A. For Washington Water Power.

Q. About when did this job start?

A. About May the 12th.

Q. And you worked for Lewis Construction Company on this line from May 12th until when?

A. July 11th.

Q. On or about July 1st were you involved in an accident on the line?

A. I don't think it was the 1st; I think it was the 2nd or 3rd. It was about the 3rd. [4]

Q. What day of the week was it?

(Deposition of Jack P. Inman.)

A. Friday.

Q. Let's see, in 1954, what date did you say the accident was?

A. The one on the 1st of July; is that the one you are referring to?

Mr. Coughlan: I would like to straighten that out.

Mr. O'Kelly: I was following the pleading.

Mr. Coughlan: I made a mistake. I hope it was a typographical one. That should be "July 11th" instead of "July 1."

Mr. O'Kelly: July 11th, that is right.

Mr. Coughlan: I believe it can be stipulated that the correct date may be placed in there.

Mr. O'Kelly: Yes, change that to the 11th. Were you involved in an accident on or about July 11th?

A. Yes.

Q. What day of the week was that?

A. Sunday.

Q. And will you state in your own words what happened at that time?

A. We were sagging wire and we pulled it in with the winch as far as we could and it lacked just a little bit of coming to sag so we put coffin hoist on the line and was pulling it in with a coffin hoist and the line went down and [5] hit the 13,000.

Q. Let's define some of these terms. What do you mean by "sagging wire"? Will you explain that?

A. Pulling it up in the air to the correct height and the correct strain between structures.

(Deposition of Jack P. Inman.)

Q. Were you trying to get it to the correct strain in the direction of the 13,000 that it went into or the other direction? A. (No response.)

Q. Possibly you could do better if you would just draw a picture of it.

A. This is our reel setup back here. And we had strung this wire through.

Q. Do you want to label that "1"?

A. Strung this wire through to our pickups, No. 2.

Q. No. 2?

A. We went back to sag. Approximately half way; it wasn't quite half way.

Q. That is position 3, is it?

A. It is on top of the hill, a 3-pole, dead-end structure, and had the truck out here and was sagging this part of the line.

Q. That is, between 1 and 3?

A. Between 1 and 3.

Q. The truck is No. 4? [6]

A. Uh-huh. This 13,000 runs approximately north and south that we were crossing over it.

Q. Do you want to make that "5"—the 13,000? So you were bringing the wire to proper tension between positions Nos. 1 and 3, working with the truck at position No. 4, and in pulling the line up between 1 and 3 it let it down between 4 and 2?

A. 2, which was the reel.

Q. Which dropped the line into No. 5?

A. No. 5.

(Deposition of Jack P. Inman.)

Q. Was there a guard structure of any kind located at—was it near position 5?

A. There was a guard structure there. But they did not have the wire in the travelers on the guard structure.

Q. Had they used the guard structure at all in this operation? A. No.

Q. Did they use it in stringing the wire?

A. No.

Q. They didn't ever put in into the guard structure at all?

A. Not previous to the time of the accident they didn't.

Q. You mean they strung that wire without even putting it into the guard structure?

A. Yes. [7]

Q. What did they build a guard structure there for? A. I don't know.

Q. When did they do the stringing on this work, do you remember?

A. I believe it was on Wednesday and Thursday.

Q. At the time you were working on this, did you know whether the 13,000 was dead or hot?

A. No, we didn't know. We presumed that it was dead.

Q. You presumed that it was dead—

A. We didn't know.

Q. —Wednesday and Thursday and Sunday?

A. We didn't know whether.

(Deposition of Jack P. Inman.)

Q. You didn't know whether it was dead or hot?

A. No.

Q. When you went on the job was there any understanding as to whether the crossings were to be worked hot or dead?

Mr. Coughlan: Now, just a minute.

Q. (By Mr. O'Kelly): That you knew of?

A. No.

Mr. Coughlan: Just a minute before you answer. Let me get an objection on the answer and then you can answer. We object to the question as calling for a conclusion as to what this witness' understanding might have been and upon the further ground that it is irrelevant, immaterial and [8] incompetent. Will you put that objection in before the answer? I think he answered it before I got a chance to object.

Q. (By Mr. O'Kelly): Were you told or instructed at any time as to whether crossings were made hot or cold or dead?

Mr. Coughlan: Just a minute.

The Witness: Not to my knowledge.

Mr. Coughlan: Just a minute, again.

The Witness: Not to my knowledge.

Mr. O'Kelly: Whether it is irrelevant is reserved until the time of trial. You may object as to whether the question is in the proper form. What was your answer?

A. Not to my knowledge.

Q. Generally when you work for other con-

(Deposition of Jack P. Inman.)

tractors, are you advised when you are making a hot crossing or when you are making a dead crossing?

Mr. Coughlan: Just a minute. To that we object as being incompetent, irrelevant and immaterial.

Q. (By Mr. O'Kelly): You can go ahead and answer now.

A. Not to my knowledge.

Q. Do you ever make crossings without guard structures installed of any kind?

Mr. Coughlan: Same objection. [9]

The Witness: Do you mean, have we ever?

Q. (By Mr. O'Kelly): Have you ever participated in the making of a crossing where no guard structure of any kind was installed? A. Yes.

Q. Had you on this job? A. Yes.

Q. Did you know why there were guard structures installed in some crossings and not in others?

Mr. Coughlan: We object as being incompetent, irrelevant and immaterial.

The Witness: Assume—assume when you install a guard structure the line is hot.

Q. (By Mr. O'Kelly): When you don't install a guard structure the line is dead?

A. That is the general procedure.

Q. That is the general procedure. You knew that a guard structure was installed here?

A. Yes.

Q. Did you assume that the line was hot or dead?

A. I would assume it was dead, because the wire was not in the travelers.

(Deposition of Jack P. Inman.)

Q. Was never in the travelers at any time, is that your statement? [10]

A. It was never in the travelers at any time prior to the accident.

Q. It was not in the travelers when they strung the wire or at any time prior to the accident, is that correct? A. No.

Q. Did they advise you why they built a guard structure?

A. They don't advise the men working. They might tell the foreman why they built a guard structure.

Q. Who were the other workmen working with you at that time?

A. Leo Pinelli was foreman. Hoot Brown was the lineman. George Beedy was a lineman. Cliff Laughary was an operator. Bill Eliopulos was an operator operating the truck at the time. I was an operator assigned to the sagging crew for that day.

Q. Just prior to this accident, do you remember whether Mr. Brown said anything to the foreman about the line being in the travelers?

A. I believe Hoot asked if the line was in the clear.

Q. If the line was in the clear. What do you mean by "in the clear"?

A. If it would get into the 13,000; in other words, if it was clearing.

Q. What did the foreman say?

A. "Yes, it is in the clear." [11]

Q. Did he make any other suggestions?

(Deposition of Jack P. Inman.)

A. Not to my knowledge.

Q. In your work generally have you made many hot line crossings?

Mr. Coughlan: We object on that, irrelevant and immaterial. Go ahead and answer.

The Witness: Well, if the occasion comes up we make a hot line crossing.

Q. (By Mr. O'Kelly): You have made hot line crossings for other people besides the Washington Water Power, haven't you? A. No.

Q. Never have?

A. No—now, I will take that back. Yes; Bonneville.

Q. Made them for Bonneville. What do you do when you make a hot line crossing—build a guard structure?

A. Build a guard structure—adequate guard structure.

Q. With an adequate guard structure there is nothing particularly dangerous about making that sort of a crossing, is there?

Mr. Coughlan: Well, now, let's see; we object to that—calling for a conclusion, improper examination of this witness. He is not qualified. There is no proper foundation been laid for that type of question. [12]

Q. (By Mr. O'Kelly): Do you want to answer it now?

A. Well, all work—no line work is safe, I will put it that way.

(Deposition of Jack P. Inman.)

Q. This is just within the ordinary course of that type of work, is that correct?

(No response.)

Q. In other words, all line work——

A. ——it is hazardous.

Q. ——it is hazardous? A. Yes.

Q. And making a hot line crossing is not particularly any more dangerous than many other things you do, is that correct? A. Yes, it is.

Q. It is more dangerous? A. Yes.

Q. Of anything else you do or most anything else you do?

A. I would say most anything else.

Q. Is it dangerous if you have an adequate guard structure?

A. Not as much so as if you don't use a guard structure.

Q. Wasn't that the purpose of the guard structure—to make it safe so it won't——

A. It is the purpose of a guard structure to make it [13] comparatively safe, yes.

Q. If the line had been in the guard structure on this particular day, would the accident have happened?

Mr. Coughlan: Just a moment. We object to that question as no proper foundation having been laid. This man is not qualified as an expert. It is leading and suggestive, calls for a conclusion.

Mr. O'Kelly: As far as the latter part of the

(Deposition of Jack P. Inman.)

question is concerned, I claim the right to cross-examine this witness as an adverse witness.

Q. You know how the line got into the thirteen, don't you, Mr. Inman; how the line you were sagging got into the 13,000? How the physical act of getting into the 13,000? You know what happened down there, don't you?

A. Well, it wasn't in the guard structure. It wasn't in the traveler and just dropped down into it.

Q. If it had been in the travelers it wouldn't have dropped into it, would it?

A. Not unless the guard structure would have broke or something. To my knowledge, I don't think it would.

Q. So that the real cause of this accident was the failure to put this in the guard structure, is that correct?

Mr. Coughlan: Object to the question; calls for a conclusion.

Mr. O'Kelly: I think he answered, "Yes." [14]

Q. Did you answer "Yes"?

A. I think that the accident wouldn't have happened; I don't think it would have happened at all if it had been in the guard structure.

Q. Was there any other action that is normally taken in connection with sagging of that sort that the contractor failed to do at this time?

A. All contractors have different methods possibly of sagging wire.

Q. Isn't it a practice when you are sagging wire, as you say, between 1 and 3 to have someone down

(Deposition of Jack P. Inman.)

on a reel taking it up down at position 1—rather, position 2 here—— A. No.

Q. ——in your exhibit? A. No.

Q. Do you remember Mr. Brown suggesting that that be done? A. No, I don't.

Q. Prior to the accident. You don't remember that? A. No.

Q. When is the line most apt to get into a line it is crossing? When you are pulling the line in or when you are sagging?

A. It is about a 50-50 chance each way.

Q. You never operated where they took special safety [15] precautions during the pulling-through process and then dropped them on the sagging such as killing a line or putting it in—— A. No.

Q. ——or out of a guard structure?

A. When you kill a line it is generally killed for sagging and stringing both.

Q. But at least you will concede that the stringing is as hazardous as the sagging, is that right?

A. A rough way to put that. You have tension both ways on stringing. In other words, you have your brakes on the reels and you have your pickups at the other end, where on sagging there is no way to pick that wire up as the slack is coming out.

Q. Didn't they have a reel down here at position 2 that they could have taken it up on?

A. Not connected up.

Q. It could have been done, just the same. When you say it is not connected up, they had a reel there to reel it up, didn't they?

(Deposition of Jack P. Inman.)

A. They could have put a winch truck down there and sucked this line on in.

Q. Have you worked for Lewis Construction Company since July 11th? A. No. [16]

Q. Do you know whether any of the other employees knew whether the line had ever been in the guard structure? Was there any discussion about it at all?

A. If it had been in the guard structure?

Q. Yes; if it had ever been in the guard structure? A. No.

Q. Now, did you hear any discussion as to why it wasn't in the guard structure? A. No.

Q. About where were you standing at the time of the accident?

A. About 5 to 6 foot in back of the truck.

Q. And what were you actually doing at that time?

A. I was pulling on the coffin hoist handle.

Q. You mentioned that before; what is a coffin hoist?

A. It is a chain ratchet affair to take slack out of line.

Q. A chain ratchet affair. Will you describe it a little better?

A. It has a long, heavy chain that goes through a ratchet—sprocket—and as you pull on the handle, it will suck that chain in. There is a hook on each end of this and you can hook grips on one end and hook the other end into a sling.

Q. What was this hooked to on each side? [17]

(Deposition of Jack P. Inman.)

A. Hooked to a dynamometer. We had a short choker over the penal hitch of the truck with the dynamometer on it. The coffin hoist on one end was hooked on the dynamometer and on the other end was hooked on a pair of grips and the grips was up on the face that we were sagging.

Q. "Face," you mean the line? A. Line.

Q. So that this is an arrangement for pulling up the line a little tighter with a dynamometer which is a measuring gauge—— A. Yes.

Q. ——to measure the tension on the line?

A. Yes.

Q. And you pull that up until the dynamometer reads proper tension and then who snubs the line at that point?

A. Hoot Brown was up the pole to snub the line on at that point.

Q. Where was Mr. Beedy at that time?

A. Standing across from me and approximately a foot closer to the truck.

Q. Was he working on this same thing that you were? A. Yes.

Q. You were injured in the same accident, were you? A. Yes. [18]

Q. You commenced an action against the Washington Water Power Company as a result of that accident, did you? A. Yes.

Q. Was this wire that you were working on grounded anywhere?

A. No; not to my knowledge.

(Deposition of Jack P. Inman.)

Q. Was it standard practice to ground wire when you were working on it in that way?

A. Yes.

Q. If it had been properly grounded, would that have avoided the accident?

Mr. Coughlan: Object to that as calling for a conclusion. No proper foundation been laid.

The Witness: Not being an expert or engineer, but I would say that it would have helped.

Q. (By Mr. O'Kelly): Were you using any kind of insulating equipment at all at the time?

A. No.

Mr. O'Kelly: That is all.

Redirect Examination

By Mr. Coughlan:

Q. Mr. Inman, do you know Mr. Sam Hammar?

A. Do I know Sam Hammar?

Q. Yes. [19] A. Yes.

Q. Do you know who he works for?

A. In that job he was an Inspector for Washington Water Power.

Q. And do you know Mr. Glenn George?

A. Yes.

Q. And who does he work for?

A. He is an Engineer for Washington Water Power.

Q. And were they on this job? A. Yes.

Q. Had they been inspecting the job between

(Deposition of Jack P. Inman.)

Wednesday and Sunday when this occurrence occurred?

A. Mr. Hammar had. I couldn't say about Mr. George, I don't know. He might have been at a different phase of the job at the time.

Mr. Coughlan: That is all.

Mr. O'Kelly: Mark this Exhibit "A" for Identification.

(The drawing referred to was marked Defendant Washington Water Power's Exhibit "A" for Identification.)

Recross-Examination

By Mr. O'Kelly:

Q. You said that Mr. Sam Hammar was there some time between Wednesday and Sunday. Do you know what days he was there?

A. To my knowledge, he was there every day on some phase [20] of the job.

Q. Was he there on the day of the accident—Sunday? A. I didn't see him.

Q. Did you see him on Saturday?

A. We didn't work on Saturday.

Q. When did you see him?

A. Saw him Friday.

Q. Saw him Friday. So that, actually, all you are saying is that you saw him there on Friday; you know he was there Friday?

A. I know he was there Friday.

Q. But that is all, isn't it?

(Deposition of Jack P. Inman.)

A. Well, it is quite hard to say whether a man was there or whether he wasn't.

Q. From your knowledge, all you know is what you saw, isn't it?

A. I can't remember back whether I saw him on Wednesday or Thursday or not.

Q. But you don't remember seeing him on Saturday or Sunday, do you? A. No.

Mr. O'Kelly: That is all.

Mr. Coughlan: That is all.

(Whereupon, at 10:40 a.m., the taking of the pretrial deposition of Jack P. Inman was concluded.) [21]

Changes Requested by Jack P. Inman Be Made in
His Foregoing Pretrial Deposition Transcript
for Inclusion on This Page:

Changes and Reasons Therefor:

Page 4, Line 2—Add Mountain States Power Company, Sandpoint, Idaho.

Page 11, Line 5—Add the words: "It was not."

Page 18, Lines 5 and 6—Substitute the word "phase" for "face" where it appears on these two lines.

Page 19, Line 7—Add the words: "It is standard practice."

I hereby acknowledge that I have been instructed to carefully read the transcript of my foregoing pretrial deposition taken on May 9, 1955, and to

(Deposition of Jack P. Inman.)

submit any changes, with the reasons therefor, for inclusion on this Change Page; that I have done so and the answers set forth, together with the changes on this page (if any), are the answers I gave.

/s/ JACK P. INMAN.

State of Washington,
County of Spokane—ss.

I, the undersigned, do hereby certify that I instructed Jack P. Inman to carefully read the foregoing transcript of his pretrial deposition and to submit any changes desired for inclusion on this page and thereupon to sign the same if it truly reflected his answers to the interrogation; that Jack P. Inman asserted he had read the foregoing transcript and acknowledged the answers contained therein are the answers he gave (together with the changes listed on this page [if any]), to the question propounded, and signed this certification to that effect.

[Seal] /s/ OREN J. CASEY,
Notary Public.

Dated May 11, 1955.

[Endorsed]: Filed May 12, 1955. [22]

[Title of District Court and Cause.]

DEPOSITION OF RUBEN LIDDELL BROWN

The following deposition of Ruben Liddell Brown, taken before G. C. Vaughan, a Notary Public for the State of Idaho, on May 16, 1955, at the Court Room of the United States District Court in the Post Office Building, Coeur d'Alene, Idaho.

Appearances:

THOMAS PAYNE, ESQ.,

Attorney for the Plaintiffs.

ALAN G. PAINE, ESQ.,

W. F. McNAUGHTON, ESQ.,

Attorneys for the Defendant.

Mr. Paine: This deposition is being taken due to the fact that this case has been unavoidably delayed, and is taken by agreement of counsel. The usual objections may be made at the time of trial to any of the questions, except as to the form of the questions. Is that agreeable?

Mr. Payne: Yes, that is agreeable.

RUBEN LIDDELL BROWN

called as a witness by the defendant, after being first duly sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows:

Examination

By Mr. Paine:

Q. Will you state your name?

A. Ruben Liddell Brown.

(Deposition of Ruben Liddell Brown.)

Q. Where do you live, Mr. Brown?

A. I live in Salt Lake City, Utah.

Q. How old are you? A. Thirty.

Q. How long have you lived in Salt Lake City, Utah? A. For about ten months.

Q. Will you give us the street address there?

A. It is 2969 South 3435 East.

Q. Do you expect to be there during the Summer and Fall?

A. That's my brother's home. I stay with my brother and if I am not there he will know where I am at.

Q. What is your line of work or business? [2*]

A. Journeyman power lineman.

Q. Are you a member of the Union?

A. Yes, sir.

Q. And how long have you been a journeyman power lineman? A. About seven years.

Q. For whom are you working now?

A. A firm called Detweiler & Detweiler, out of Twin Falls, Idaho.

Q. What other companies or organizations have you worked for as a journeyman lineman?

A. I have worked for a lot of them. The Midland Constructors, Huntington Park, California. The Lewis Construction Company, Great Falls, Montana. Howard P. Foley Company and the Wasatch Electric Company, Salt Lake City——

Q. And several others? A. Yes.

Q. I think that is sufficient. Generally, and in

(Deposition of Ruben Liddell Brown.)

brief, what is the duty of a Journeyman lineman; tell us that?

A. I would say that it means, to me, to carry through in that classification; it is to be able to do anything they ask you to in the power line.

Q. That is in connection with either the maintenance or the construction of a power line?

A. Yes, sir.

Q. And you have been engaged in constructions jobs, have you? [3]

A. And maintenance work; I have worked for power companies, too.

Q. Were you employed at one time by the Lewis Construction Company? A. Yes.

Q. What particular piece of work were you engaged on there?

A. Reconductoring the highline; I think it started out up around Kellogg and ended up above Wallace.

Q. Who did the Highline belong to?

A. Belonged to the Washington Water Power Company.

Q. When you say reconductoring, what type of work is that?

A. It meant—well, I think they had copper wire in there and they wanted to increase the load on this line and so they were putting in aluminum, a larger wire to carry the load.

Q. To carry more electricity?

A. That's right.

Q. And those wires, in general, how did you do

(Deposition of Ruben Liddell Brown.)

that? Did you restring them or did you take the poles down or anything of that sort, or were the poles left standing?

A. The poles were left standing, but a lot of the cross-arms on the highline were changed and we pulled the aluminum in with the old copper, as they took it out they pulled this aluminum wire in with it.

Q. As I understand it, you attach the new wire onto a stretch of the old copper wire and then you would go [4] up the line a ways and then with your machine you would pull this wire out and the old copper wire would come and the new aluminum attached would come on and follow in place, is that right, through the insulators? A. Yes.

Q. So that the wire was kept up on the poles at all times? A. Yes, sir.

Q. Now, in that construction, did you have occasion to string those wires over several places where they crossed other wires underneath that had electric current in them? A. Yes, sir.

Q. That is known as a hot crossing, is it?

A. That's right.

Q. Do you remember about how many of those hot crossings you made on that stretch of work?

A. Well, no, sir; I don't, because I wasn't stringing—I wasn't on the stringing; I was on the sagging crew.

Q. But you do know there were several of them?

A. Yes, I do.

Q. And is that common practice? Have you often made crossings of energized lines?

(Deposition of Ruben Liddell Brown.)

A. Yes, sir.

Q. It is almost a necessity, isn't it?

A. Yes, it is; you can't very well get away from it.

Q. With the country so covered with lines as it is now? A. That's right. [5]

Q. Do you know of examples where others such as Bonneville Power Administration or Montana Power Company have done that?

Mr. Payne: We object to that unless he has worked for those companies.

Q. In your work as an experienced journeyman wireman, I think you did testify that it is common practice to make crossings of wires that are hot?

A. Yes, sir.

Q. What is done to prevent the wires from coming in contact? Is there several methods of doing that?

A. Well, yes, sir, there is; there are several ways; you can either set guard poles or guard structures or you can tightline your wire in by putting brakes on the reels with the new wire——

Q. ——so the wire is kept under tension at all times? A. Yes, coming in under tension.

Q. And it just pulls across and doesn't sag down? A. Yes.

Q. Or you say you build guard structures or poles that are set by the line that is energized and then have frames across so that if the wire that is above sags down it will hit the frame and keep out of the wire below? A. Yes, sir.

(Deposition of Ruben Liddell Brown.)

Q. And did the Lewis Construction Company use those structures in this work? [6]

A. They use guard poles but they didn't use them as a structure, they used them as a single pole and put a regular wire traveller on them.

Q. They had them on a single pole with a Shiv or Trolley arrangement hanging on the side of the pole where the wire would travel through?

A. Yes, sir.

Q. A good deal like this microphone hanging on here (indicating)?

A. That's right.

Q. And what would the effect of that be if the wire was put in those little travellers or pulleys? Would it keep it from contacting the hot wire?

A. Well, these travellers as you call them, that's what most everybody calls them, they have a gate on the side of them and this gate has an arrangement so you can open them and take the wire out, and it is put on there with a nut, a nut and bolt and screws down if it is put on there right.

Q. So that if you put the wire in the traveller and put this little nut and bolt on then it can't sag down and contact the other wire.

A. That's right, they can't get out unless you take them out, or the traveller breaks.

Q. Now, do you remember the time when Mr. Beedy was killed?

A. Yes.

Q. Up on this Lewis Construction job? [7]

A. Yes, sir.

Q. And Mr. Inman was injured?

A. That's right.

(Deposition of Ruben Liddell Brown.)

Q. And were you on the crew that day?

A. Yes, sir.

Q. Whereabouts was the accident?

A. Well, if I have my directions straight, I don't know too much about that, but I think it was about three miles Northeast of Wallace.

Q. About three miles northeast of Wallace?

A. Yes, sir.

Q. Tell us in your own words what you were doing that day in connection with it, beginning, maybe a little while before the accident?

A. I don't know just how to put it. I climbed the pole. They were going to sag this wire and I was going to climb the pole and Beedy and Inman and there was another fellow there by the name of Eliopoulos and another groundman there that I can remember the name. This Eliopoulos was driving a truck and I was going to climb the pole. Inman and this groundman and Beedy were going to work there on the ground—there has to be someone there to do the work on the ground, and before I went up on this pole—I had never been on this section of line there and I asked this man that we were working for, I said, "I can see some houses down [8] there." I said "Do you have a hot crossing down there?" and he said "Yah," and I said "What kind of a crossing is it?" and he said "A thirteen thousand crossing," and I said "Have you got a guard structure in there?" and he said "Yes," and I said "Is it a structure or pole?" and he said "It's a structure."

(Deposition of Ruben Liddell Brown.)

and I said "OK," and I asked him, I said "How does it seem to you?" I said, "You are going to run a lot of slack into that wire down there. Why don't you dead-end the slack side of this?" and he could have done it without any trouble. He said "We will waste a lot of wire." I said "You got this wire strung all the way through here and you got to waste it somewhere." I said "You got to waste so much to get it up to sag," and he said "No, we will just let it go ahead; it's in the guard structure down there and it won't bother anything." So I went up the pole and I put this winch-line that they had run off the back of the truck; that's what they were going to use to sag it with; pull it up as close to the sag as they could get it, and I hooked it on the wire and they pulled it out—the truck was setting there. You couldn't get it any further away from the structure and there wasn't enough room to get all of the slack out of it. So when they pulled it as far as they [9] could and the winch-line was all wound back in. I caught it off in a hoist and grip—we had a steel sling on the pole used to hold it, and I don't know why they did, and I never will know why, but they put on their grip and a steel sling from the back of the truck up on this wire and then released the winch-line. Well, the winch-line had to come back up the pole anyway and they couldn't reach up far enough with that wire still tight, from there, to do any good with it, so they sent it back up the pole again and started to pull again, and they just barely took enough slack so my

(Deposition of Ruben Liddell Brown.)

hoist came to where it released and when they did I released the hoist and stepped back around the pole to get out of the way of the wire and they started to pulling and I heard this awful moan and turned around and looked and Beedy was just peeling away from the truck and tipping over. He tipped over on his face away from the truck and Inman was still hanging onto it. He was the one that was moaning and shaking pretty bad: it was throwing him around. I hollered to this guy and said "You better start working on that man that's down and I beat it off the pole and by that time the circuit had evidently kicked out and dropped Inman loose and I started working on Inman and they started working on Beedy about the same time and Inman came out of it but Beedy was dead. [10]

Q. They were never able to resuscitate Beedy?

A. No.

Q. How far away from the crossing was this?

A. Well, I wouldn't know in exact feet, but I think it is pretty well impressed on my mind after watching a man die like that. I think that there was about four or five spans of wire from there down to this crossing.

Q. Four or five poles or spans? A. Yes.

Q. And had the wires been in the guard structures or pole with this messenger or carrier on down there would it have gotten in contact with the hot wire? A. No, sir.

Q. And there would have been no accident?

A. No, not to my way of thinking.

(Deposition of Ruben Liddell Brown.)

Q. What do you mean when you say you were sagging the wire; will you explain a little more what you mean by sagging the wire?

A. Well, when this wire is put up, especially this aluminum wire, it has to be pulled in at a certain tension because if it isn't it tends to wear itself out in these shoes they have to hold it up after they take it out of the travellers and there is a certain sag tension to it if you check into it——

Q. Sort of a standard amount of sag between the poles? [11]

A. That's right, and if you check into it with any of big aluminum producers you will see that they recommend an inch or within two or three inches and if you don't have it that way they won't even guarantee the wire, how long it will stay up.

Q. So after you get this aluminum to follow the copper through then you have to go along and get just the right amount of sag between each pole?

A. That's right.

Q. And you do that by wheeling it in on this winch?

A. Yes, until you get it in pretty close and then you can't move it.

Q. And you fasten it up to each pole as you go along?

A. You can't move it right onto the side with the winch because you just can't stop them in time so you put one of these cotton hoists on it and you pull it one notch at a time and in that way you can pull it right up to where it is supposed to be.

(Deposition of Ruben Liddell Brown.)

Q. You said that you suggested to the Foreman that he dead-end this wire; what did you mean by that?

A. I could probably show you a lot better if I could draw it out for you, but I can explain it if you want me to. (Witness makes sketch.) This is this line that came in that we were working on. It came up the hill like that. This is the dead-end pole here, the one that we were going to dead-end this wire on, and then [12] on over here there was an eight structure, and here was another dead-end and this started on the hill. All this wire came up like this and it went down through there and dropped way down into this canyon.

Q. Is this where the crossing was?

A. This is where the crossng is down in here. There was a single pole down there on that crossing but these bells, these dead-end bells, they stick out like this when the wire is pulled into them and there is a shoe that fits onto the end of them—a clamp shoe, and you put it in that, and that is what holds the wire up. These bells were hanging down on both sides of the pole that I was working on and I suggested when we first started, before we ever moved this wire, that we take this hoist and pull these bells out straight on this and fasten this wire here and cut it and have the winch-line holding it back this other way and cut it and then this wire couldn't ever move.

Q. If they had pulled it here then you wouldn't have had all this slack?

(Deposition of Ruben Liddell Brown.)

A. That's right. It wouldn't have run ahead on you or nothing; that was the suggestion that I made.

Q. Will you put an (a) here—that represents a dead-end does it? A. Yes.

Q. (a) is the dead-end pole. Now put a little—what do [13] you call these, the bells?

A. They are insulators.

Q. Now, just mark a little line out there with the letter (b)? A. Yes.

Q. Now, put a little arrow there with the letter (c). Now the letter (c) represents where you suggested that it be cut? A. Yes.

Q. That it be dead-ended? A. That's right.

Q. Had that been done, no wire could have slacked down the hill to the hot crossing?

A. Not unless it took this pole with it.

Q. The foreman said, "It would take too much time"?

A. That he didn't want to waste this wire. He said "If we cut it here and pull all that slack out, we would waste that wire." I said "Look; you've got it strung all the way through; you are going to waste it somewhere." I said "When you get to the end of the line you've got to take that slack out."

Mr. Paine: I would like this marked as Exhibit 1.

(Exhibit marked by Reporter.)

Q. Had you worked on the actual stringing of the aluminum across the thirteen thousand?

A. No, sir. [14]

(Deposition of Ruben Liddell Brown.)

Q. You had not been in the crew that had actually pulled it through? A. No, sir.

Q. Had the aluminum been put through that portion of it, do you know? A. You mean——

Q. Had the copper been taken out and the aluminum pulled through down as far as the crossing?

A. Yes, it was already through.

Q. This was just the sagging operation?

A. Yes, sir.

Q. How many crews did Lewis have working on that job? A. I think there was four.

Q. Do you remember what the foreman's name was? A. The one I was working for?

Q. Yes. A. Yes, it was Leo Pedalla.

Q. Do you know where he is now?

A. According to the information I have, Ed Rondig, I was talking to him, he was the superintendent, we were talking and he told me that this fellow was running a crew for him out of Belt, Montana.

Mr. Paine: I think that's all.

Cross-Examination

By Mr. Payne: [15]

Q. Mr. Brown, on the date of this accident you inferred that you were using a single-guard pole for the wire?

A. That is all that was in there. I never did see it until after the accident.

Q. Was it in the travellers after the accident?

(Deposition of Ruben Liddell Brown.)

A. No, sir.

Q. Did you inspect that?

A. Yes, sir; I went out there with the business agent from Local seventy-seven of Spokane after the accident.

Q. Would you say that it had ever been in the guard structure?

A. I can't tell you; I don't know whether it had or not. I do know that all three wires were floating free of the travellers on this guard pole. There is another way that a guy could have stopped all of that without anything more. All he would have to do is put a man down there with a telephone; they had the wire strung to use the telephone and if he had a man there watching that wire and then he could have seen them getting—getting down close there and he could have called them on the truck and told them to hold it.

Mr. Paine: He had telephone equipment?

A. He had it there, yes, sir; but he didn't use it.

Q. At the time that you and Inman and Beedy started this operation that ended in the death of Beedy, did you [16] request the foreman to make sure that these wires, or were you told by the foreman that these wires were in the travellers down below?—

A. Yes, he did.

Q. He told you they were?

A. Yes, he definitely told me they were because I asked him that I hadn't been over that section of line and I could see the houses down there and I

(Deposition of Ruben Liddell Brown.)

wanted to know how it was, what was down in there and he said "It is in the guard structure."

Q. Were there ever times in the past in making these hot crossings that request was made by the men for guard structures that was turned down?

A. Not that I know of; not on jobs that I ever worked on if they thought it was unsafe—you don't have to cross it until the journeymen linemen on the crew think it's safe, or consider it safe; that is the way I have always worked and that is the way all the people that I ever worked for have worked.

Q. In this particular job, that is on the job that Beedy was killed on, did you make hot crossings like this where they should not have been made?

A. Like I say, I never worked on the stringing crew.

Q. So you are not familiar with that?

A. Not on the stringing section. I worked strictly on the sagging crew. [17]

Q. Have requests been made, Mr. Brown, to your knowledge, that this wire will be killed?

A. Not that I know of.

Q. Not that you know of?

A. No, sir. Now, this is just a statement of my own, but actually it didn't need to be killed. If it had been put in there right in the first place there would be no need to kill it, because on some of those lines that are energized, you don't just take them out whenever you want to. The only time they are out of service is when they fall down.

Mr. Payne: I think that will be all.

(Deposition of Ruben Liddell Brown.)

Redirect Examination

By Mr. Paine.

Q. As a qualified journeyman lineman, with a proper guard structure over this crossing, would you consider it a perfectly safe operation to make the crossing?

A. Is that an opinion of mine you want?

Q. Yes.

A. No, I wouldn't consider it safe; not after I saw the guard structure.

Q. No, but I say with a proper guard structure there, would you consider it a safe operation?

A. Yes, sir, I would; it could have been made plenty safe. [18]

Q. Without de-energizing the line?

A. Yes, sir. That's right, but I don't think it was—That's just my opinion, and everybody that I have ever talked to about it didn't think it was either. They could have set one more pole in there and put one flat arm across there and there would have been no question about it. That wire could have gone half mile in the air and come back down and come flat down on the guard pole and arm and they wouldn't have had to have anyone there to watch it or anything; just put one more pole there with an arm across.

Mr. Payne: Were there any members of the Washington Water Power Company present at the time of this death?

(Deposition of Ruben Liddell Brown.)

A. No, not that I know of. There was a fellow came up there and cleared up the line after it happened. He was up the pole dragging this wire off. I went down to Wallace to get a pulmotor from the Fire Department and when I came back he was up the pole dragging this aluminum off.

Mr. Payne: That's all.

Mr. Paine: That's all; thank you, Mr. [19] Brown.

State of Idaho,
County of Ada—ss.

I, G. C. Vaughan, a Notary Public in and for the State of Idaho, do hereby certify that the witness named in the foregoing deposition appeared before me and was by me duly sworn to tell the truth, the whole truth and nothing but the truth in said matter.

I further certify that I am not a relative nor employee of any party connected with the within matter in any manner and am not financially interested in the said matter.

I further certify that the deposition was taken in the Court Room of the United States District Court at Coeur d'Alene, Idaho, on the 16th day of May, 1955, in shorthand and thereafter transcribed.

In Witness Whereof, I have hereunto subscribed

(Deposition of Ruben Liddell Brown.)

my name and affixed my seal this 24th day of May, 1955.

[Seal] /s/ G. C. VAUGHAN,
Notary Public for the State of
Idaho.

My Commission expires June 27, 1957.

[Endorsed]: Filed May 31, 1955.

[Title of District Court and Cause.]

DEPOSITION OF SAM HAMMAR

Appearances:

GLENN A. COUGHLAN,
THOMAS B. PAYNE,
Appearing on Behalf of the Plaintiffs.

ALAN G. PAINE,
ALAN P. O'KELLY,
Appearing on Behalf of the Defendant.

(Whereupon, at ten o'clock a.m., the above-entitled matter came on pursuant to written stipulation of counsel attached hereto to take the Deposition of Sam Hammar before Oren J. Casey, Certified Shorthand Reporter, and a Notary Public.)

SAM HAMMAR

called as an adverse witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Cross-Examination

By Mr. Coughlan:

Q. Will you state your name?

A. Sam Hammar.

Q. And where do you reside, Mr. Hammar?

A. In Spokane, 1718 West Kiernan Avenue.

Q. Spokane Washington? A. Yes.

Q. And what is your profession?

A. Electrical Engineer.

Q. By whom are you employed?

A. Washington Water Power Company.

Q. How long have you been so employed?

A. 22 years.

Q. Mr. Hammar, were you employed on the job near Wallace where there was a power line being reconstructed from Government Gulch to Silverton, I believe it was?

A. It was to Montana Sub—Yes, I was.

Q. And what was the nature of your job?

A. I was sent up there as the Inspector for that job by the company.

Q. Did you reside some place there while this job was [2*] being——

A. Yes, at Wallace most of the time.

Q. And could you just tell us briefly what you did there?

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Deposition of Sam Hammar.)

A. I inspected the work that was being done upon completion. I seen that materials were there for the contractor and advised Mr. George as to the progress of the job. Mr. George being my supervisor. Advised him of any troubles the contractor was in; that is, personnel and so on, which would delay the job in any way.

Q. Now, you spoke of Mr. George. What was his position?

A. Mr. George is Construction Engineer for the company.

Q. For the Washington Water Power?

A. Yes.

Q. And was he also there on the job?

A. Either once or twice a week he would come up.

Q. He would come up. Now, you were out there on the job daily, I presume? A. Yes.

Q. And the contractor was Lewis Construction Company? A. That is right.

Q. Now, this particular job started at Government Gulch, is that right? A. Yes, it did.

Q. And do you recall the date approximately when it did start? [3]

A. Started May 5th, 1954.

Q. Now, are you acquainted, Mr. Hammar, with the situation there near the Silver King Mine where that restringing operation was carried out?

A. Silver King? Silver Dollar, you mean?

Q. Well, it is fairly close to the start of the job?

A. Not the Silver King. I don't remember any.

(Deposition of Sam Hammar.)

Q. Is there a mine there called the Silver Dollar?
A. Yes, the Silver Dollar.

Q. Now, approximately the 20th of May do you recall the line being strung dropping into a 13,000 volt line there?

A. The Silver King? I don't remember any Silver King.

Mr. Payne: Off the record.

(Discussion had outside the record.)

Q. (By Mr. Coughlan): Go ahead, Mr. Hammar.

A. There was an accident there. That is, the wire broke—the sleeve—and it fell across a 13,000-volt line at the Bunker Hill tap.

Q. Well, now, this occasion that I speak of occurred prior to the one that happened at the Bunker Hill?

A. No, I don't remember of any accident.

Q. You are not aware of that?

A. No, I am not.

Q. Then going on to the Bunker Hill property, you are [4] aware of an accident where the line fell upon the 13,000 at Bunker Hill?
A. Yes, I am.

Q. And what happened at that time that you recall?

A. That was the instance where the sleeve broke or conductor broke and it slacked back, of course, striking the 13,000 volt line near the beginning of the pull.

(Deposition of Sam Hammar.)

Q. Of course that energized the line it dropped into, did it not? A. Yes.

Q. And what occurred as far as transformers were concerned, were there any transformers burned out or——

A. I understand the Bunker Hill people have a local distribution system there. I think it is called the Light House. And they informed Mr. Raunig through me—had told Mr. Raunig that they had trouble with the transformer and they wanted to see Mr. Raunig. And I told him to see them, giving the man's name. And he did that. And I understand it was trouble with the transformers of theirs.

Q. Were you aware at this same instance the line also fell on some houses at Wardner?

A. That was the same accident.

Q. The same one?

A. The tip of the wire as it pulled in two just struck one house going down. It didn't do any damage, however. [5]

Q. Was Mr. George present at this time?

A. No.

Q. Was he aware of this occurrence?

A. Yes, I informed him.

Q. Now, then, going on, Mr. Hammar, to the locality near the cemetery, somewhat east of the cemetery, at approximately the 15th of June, sometime in that neighborhood, were you aware of the line which was being strung falling into an energized line there? A. Yes.

(Deposition of Sam Hammar.)

Q. And there were some men burned at that place? A. No.

Q. Was it a subsequent time that somebody was burned there? A. No.

Q. Are you acquainted with a man by the name of Swenson?

A. No, I don't remember that name.

Q. Do you know a man by the name of Jack Inman? A. Yes.

Q. Did you at that time give Mr. Inman some ointment to put on one of these men who were burned?

A. Yes, I remember that now. He was on the telephone. And I think he, in hanging onto the receiver, blistered the tip of his fingers is all.

Q. Do you recall that there was a man there by the [6] name of Frank Reed? A. Yes, he was.

Q. Is it possible that he was the man who was burned on the fingers?

A. Well, it could have been.

Q. And Mr. Swenson was sitting on a truck and he was burned on the buttocks at that time, do you recall that? A. No, I don't recall that.

Q. You recall then that there was only one man burned, as near as you recall?

A. That is right, and he was just blistered on the fingers where he had hold of the receiver.

Q. Are you acquainted with a man by the name of Leo Padillo? A. Yes, I know him.

Q. Were you aware that he was burned in this same occurrence that we are speaking of?

(Deposition of Sam Hammar.)

A. No, I didn't know that.

Q. Was there a fire also as a result of this occurrence? A. That is right, there was.

Q. And the fire department was called?

A. Called, that is right.

Q. And was Mr. George present also at this occurrence? A. No.

Q. But he was advised, I presume? [7]

A. He was advised.

Q. And you were acquainted with the situation there, I presume, all the time during this period?

A. Yes. I might say here, that recalling this incident, the line underneath the conductor that was being strung in was dead but when that line pulled in two, the heavy line coming down on this already de-energized line stretched a jumper back at the adjacent pole or adjoining pole and it made it come in contact with a live conductor energizing the line underneath the one that was dead formerly and that is how the grass fire started. However, that line was de-energized during the operations.

Q. The power was cut off that line?

A. Yes.

Q. Prior to the time——

A. Prior to the stringing operations. But during the accident, why, it, like I say, pulled a jumper. The heavy weight pulled the jumper. The contact of the live wire on that pole energized the dead circuit.

Q. I see. Now, at a time subsequent to that, Mr. Hammar, at a place west of the Polaris Mine, were

(Deposition of Sam Hammar.)

you acquainted with the fact that the line again fell and got into some trees? That would be approximately the 21st of June.

A. West of the Polaris Mine?

Q. Yes. [8]

A. No, I don't recall that now.

Q. And on this same day or very near thereto, near the Silver Dollar Mine, were you acquainted with the occurrence where the line sagged down and broke a pole and the secondary line—the service to the mine was discontinued or torn out as a result of this falling down?

A. That was—Service to the Silver Dollar Mine was de-energized prior to the stringing operations. It was due to the fact that the service pole that was up on the hillside and the clearance between their service and the 110,000 line which was being strung in was minimum clearance and with any sagging at all it would have reached that service so we had the service cut dead to the mine. It probably sagged into that but it was dead at the time.

Q. You recall then something about the occurrence that I am speaking of? A. Yes.

Q. And that this line was torn down or something?

A. Yes, it was dead. It was de-energized.

Q. Then going along, Mr. Hammar, to a date approximately July 2nd of that same year, '54, at a point east of Osborne, Idaho, where the line goes across the highway, are you aware of the incident where the line fell to the ground there and it was on

(Deposition of Sam Hammar.)

the ground there for a period of time, perhaps a day? [9]

A. That was over a week end and the contractor had the conductor strung in up to sag and tension and for some unknown reason they were never able to get the culprit, but a construction firm who were doing work dredging along the line had a big boom truck—derrick truck—and over this week end—nobody saw it—this truck or boom truck apparently swung their boom into the line tearing it down on a Sunday.

Q. You say that there was no one who could state what had happened?

A. No one who could state who had done it definitely, but all indications—examining the conductor after it was down on the ground—indicated that the wire had been in contact with some metal object.

Q. And there was a considerable amount of wire on the ground, wasn't there?

A. That is right.

Q. As a matter of fact, it was actually in piles, wasn't it?

A. That is right, coiled up naturally due to the tension on the conductor. Two men came down to do the repairing temporarily to get it out of the highway.

Q. Now, all of these instances, I presume, were reported by you to Mr. George? A. Yes.

Q. He was advised? [10]

A. Yes. I say "culprit." This contractor who

(Deposition of Sam Hammar.)

was doing the work no doubt had insurance for such instances like that but he wouldn't be man enough to come out and report that he had done the damage to the line. It was just an act of negligence on somebody's part.

Q. Then, Mr. Hammar, there was another incident of the same day this man was burned that you speak of—the one that you know about——

Mr. O'Kelly: Which one was that?

Mr. Coughlan: Mr.——

Mr. O'Kelly: Someone burned his fingers on the telephone?

Mr. Coughlan: Mr. Reed, I thought, and Mr. Hammar thought maybe Swenson, is that correct?

A. No, I thought it was Reed. I don't know Swenson.

Q. Were you aware of an incident where the static wire running over energized wire fell into the energized wire? This would be in the same neighborhood of where the work was being done near the Kellogg Cemetery but may have not been in that exact area where the static wire was energized that day.

A. No, I don't recall any static wires falling into any energized line.

Q. Now, are you aware of an occurrence where the line being strung fell into a barnyard and on to a barn in the [11] Vicinity of the packing plant northwest of Wallace?

A. Are you speaking of the time when the fatal accident occurred?

(Deposition of Sam Hammar.)

Q. No; this was prior to that.

A. No, I don't.

Q. Are there any other instances besides those that we have mentioned here that you are aware of where there was trouble—the line fell into another energized line? A. No.

Mr. Coughlan: I believe that is all.

The Witness: Outside of the fatal accident?

Q. (By Mr. Coughlan): That is right. You are aware of the occurrence on the 11th of July where Mr. Beedy was killed? A. Yes.

Q. Were you present that day at this place where it occurred?

A. No, I was not.

Q. When was the last time that you were present there at the place where the Beedy accident occurred?

A. They were stringing—the place where the accident occurred was up on top of a mountain. I don't believe I had ever been there at that particular place prior to the accident.

Q. Were you ever at the place where the line crossed [12] the Nine Mile line? A. Yes.

Q. And when was the last time you were there prior to the accident?

A. Thursday prior to the accident.

Q. And wasn't line strung across there at that time? A. No.

Q. You were, of course, acquainted with those premises, however, prior to the stringing?

A. Yes.

(Deposition of Sam Hammar.)

Q. You knew what they were and how they looked and so on? A. Yes.

Mr. Coughlan: I believe that is all.

Mr. O'Kelly: I just wanted to ask you a clarifying question. You said that you were living up at Wallace. Did you stay there all the time?

The Witness: No, I went up Mondays and came back Friday afternoons arriving at Wallace around one or two o'clock Monday afternoon.

Mr. O'Kelly: And on the week end that the accident occurred which Mr. Beedy was killed in, you left there Friday and——

The Witness: Yes, with Mr. George's consent. We had outlined the work prior to the stringing operations. [13]

Mr. O'Kelly: I believe that is all.

Q. (By Mr. Coughlan): One further question. Mr. Hammar, was Mr. George there with you at any time in this area where the accident happened?

A. Oh, yes, we were all along the line together at one time or another. Just when I don't recall.

Q. I presume that would be numerous times, would it not? A. Yes, no doubt.

Mr. Coughlan: That is all.

(Whereupon, at 10:30 a.m., the taking of the deposition of Sam Hammar was concluded.) [14]

(Deposition of Sam Hammar.)

Changes in Form and Substance Requested by Sam Hammar Be Made in His Foregoing Deposition Transcript:

CHANGES IN FORM AND SUBSTANCE AND REASONS THEREFOR

At all places throughout this deposition where the spelling of "Hammer" is spelled with an "e" change the spelling to "Hammar" with an "a."

Page 4, line 17—Answer should read: "That is, the wire broke at a sleeve and the wire fell across a 13,000 volt line at the Bunker Hill Tap.

Page 6, line 24—Delete "is all."

Page 7, line 2—"Yes, he was employed by the contractor."

Page 8, line 6—Insert the word "de-energized" in place of "dead."

Pages 8, 9 to 11, incl.—This line should read: "* * * pole and the strain on the jumper caused it to contact the live conductor re-energizing the conductor underneath the Hi-line which the contractor was restringing. The grass fire started as a result of this mishap. However, * * *."

I hereby acknowledge that I have been instructed to carefully read the transcript of my foregoing deposition taken July 14, 1955, and to submit any changes in form and substance desired, with the reasons therefor, for inclusion on this Change Page; that I have done so and the answers set forth, to-

(Deposition of Sam Hammar.)

gether with the changes on this page, if any, are the answers I gave.

/s/ SAM HAMMAR.

State of Washington,
County of Spokane—ss.

I, the undersigned, do hereby certify that I instructed Sam Hammar to carefully read the foregoing transcript of his deposition and to submit any changes in form and substance desired for inclusion on this page and thereupon to sign the same if it truly reflected his answers to the interrogation; that Sam Hammar asserted he had read the foregoing transcript and acknowledged the answers contained therein are the answers he gave as supplemented by the changes and reason therefor listed on this page, if any, to the questions propounded and signed this certification to that effect.

/s/ BETH M. B. CASEY,
Notary Public.

Dated: July 22, 1955.

[Endorsed]: Filed September 21, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Idaho—ss.

I, Ed. M. Bryan, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing papers are that portion of the original files designated by the parties and as are necessary to the appeal under rule 75 (RCP), to wit:

1. Complaint.
2. Motion to Strike.
3. Motion for More Definite Statement.
4. Motion to Dismiss.
5. Minutes of the Court of January 17, 1955.
6. Interrogatories to Virgil Thompson.
7. Interrogatories to Washington Water Power Company and J. E. Royer, Vice President.
8. Answer to Interrogatories to Washington Water Power Company and J. E. Royer, Vice President.
9. Answer to Interrogatories to Virgil Thompson.
10. Minutes of the Court of February 15, 1955.
11. Order on Defendant's Motion to Dismiss.
12. Answer.
13. Minutes of the Court of May 16, 1955.
14. Motion for Summary Judgment with Affidavits Attached.
15. Minutes of the Court of July 7, 1955.

16. Cross-Motion for Summary Judgment With Affidavits Attached.

17. Motion to Strike Affidavits on Motion for Summary Judgment.

18. Minutes of the Court of August 5, 1955.

19. Memorandum Decision.

20. Summary Judgment.

21. Notice of Appeal.

22. Statement of Points on Which Appellants Intend to Rely on Appeal.

23. Affidavit of Mailing of Notice of Appeal, Designation of Contents of Record on Appeal and Statement of Points.

24. Designation of Contents of Record on Appeal.

25. Designation of Additional Portions of the Record on Appeal.

26. Deposition of Sam Hammar.

27. Deposition of Ed F. Raunig.

28. Deposition of Ruben Liddell Brown.

29. Deposition of Jack P. Inman.

30. Affidavit of Mailing of Designation of Additional Portions, etc.

In Witness Whereof I have hereunto set my hand and affixed the seal of said court, this 22nd day of September, 1955.

[Seal] /s/ ED. M. BRYAN,
Clerk.

[Endorsed]: No. 14893. United States Court of Appeals for the Ninth Circuit. Guenith Opal Beedy and Cynthia Guen Beedy, by His Next Friend, Guenith Opal Beedy, Appellants, vs. The Washington Water Power Co., a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Idaho, Northern Division.

Filed: October 10, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14893

GUENITH OPAL BEEDY and CYNTHIA
GUEN BEEDY, by His Next Friend,
GUENITH OPAL BEEDY,

Appellants,

vs.

THE WASHINGTON WATER POWER CO., a
Corporation,

Respondent.

ADOPTION OF STATEMENT OF APPEL-
LANTS' POINTS ON APPEAL AND DES-
IGNATION OF CONTENTS OF RECORD
ON APPEAL

Pursuant to provision of Rule 17 (6) of the Rules of the United States Court of Appeals for the Ninth Circuit, appellants hereby adopt the Statement of points on which appellants intend to rely on appeal and the designation of contents of record on appeal appearing in the typewritten transcript of the record in the above-entitled matter. Also print Notice of Appeal and Cost Bond.

Dated this 30th day of September, 1955.

/s/ THOMAS B. PAYNE,

/s/ GLENN A. COUGHLAN,

Attorneys for Appellants.

[Endorsed]: Filed October 11, 1955.